Supreme Court, U.S.
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NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

LINDA O'NEAL,

Petitioner,

v.

JUDICIAL QUALIFICATION COMMISSION OF GEORGIA

Respondents,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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125pp

QUESTIONS PRESENTED

1. Whether an elected judge in light of the First Amendment to the United States Constitution as applicable to the states through the Fourteenth Amendment can be disciplined and removed from office based wholly or in part on her making a truthful public statement on a matter to which she is a party?

2. Whether an elected judge in light of the Fifth Amendment to the United States Constitution as applicable to the states through the Fourteenth Amendment can be disciplined and removed from office based wholly or in part on her refusal to acknowledge that any specific action taken by her was improper and her refusal to accept personal responsibility for the difficulties she experienced with other elected officials?

3. Whether an elected judge in light of the Fifth Amendment to the United States Constitution as applicable to the states through the Fourteenth Amendment can be disciplined and removed from office if her lawyer is not accorded a reasonable period of time exceeding two days in which to prepare a defense for a disciplinary proceeding before the Judicial Qualification Commission that involves a voluminous amount of evidence?

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
	19

I. This case raises issues of exceptional legal importance for judges who express public opinion about social, political, or governmental matters.

A. The Supreme Court of Georgia violated a judge's right to freedom of expression in contravention of the First Amendment to the United States Constitution by removing her from office for making a truthful public statement about her difficulties with other elected county officials, who had violated the law and failed in the performance of their statutory duties.

22

II. This case raises a novel issue of great legal significance for judges who are called before judicial disciplinary bodies on charges of misconduct.

A. The Supreme Court of Georgia violated a judge's due process rights in contravention of the Fifth Amendment to the United States Constitution by removing her from office for refusing to acknowledge that any specific

action she had taken was improper and for refusing to accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County, who had violated the law and failed in the performance of their statutory duties.

24

III. This case raises the issue of adequacy of legal counsel for judges called before judicial disciplinary bodies on charges of misconduct.

A. The Supreme Court of Georgia violated a judge's due process rights in contravention of the Fifth Amendment to the United States Constitution by removing her from office while the hearing record relied upon for the removal determination showed that she was denied adequate legal counsel at the hearing.

CONCLUSION 26

APPENDIX

1. Supreme Court of Georgia Decision A1
2. Judicial Qualification Commission of Georgia, Decision A12
3. Supreme Court of Georgia Order Denying Reconsideration A31
4. Supreme Court of Georgia Motion for Reconsideration A33
5. Supreme Court of Georgia Brief in Support of Motion A37
6. Supreme Court of Georgia Petition and Supporting Brief In Objection to JQC Findings A53
7. Magistrate Judge Issues Statement A91

TABLE OF AUTHORITIES

Cases **Pages**

Scott v. Flowers, et al., 910 F.2d 201 (5th Cir. 1990). 20, 21

Inquiry Concerning A Judge No. 93-62,
RE: P. Kevin Davey, Supreme Court of Florida (1994). 23

Inquiry Concerning A Judge No. 93-62,
RE: P. Kevin Davey, Supreme Court of Florida (1994). 24

Constitutional Provisions

United States Constitution
- First Amendment 2, 19
- Fifth Amendment 2, 22, 23, 24, 26
- Fourteenth Amendment 2

28 U.S.C. §1257 2

Official Code Of Georgia,
- OCGA § 16-10-97 3, 10
- OCGA § 15-10-100 7
- OCGA § 15-10-102 8
- OCGA § 15-10-23(b) 15

Georgia Judicial Code of Conduct
- Canons
  - 1 13, 16
  - 2 A 13, 16
  - 2 B 13, 16
  - 3 B(4) 13, 16
  - 3 E(1) 13

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Linda O'Neal, appearing pro se, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Georgia, which ordered her removal from office as the elected Chief Magistrate of Peach County, Georgia.

OPINIONS BELOW

The Order of the Supreme Court of Georgia denying the Motion for reconsideration is not reported and is appended hereto at A31. The decision by the Supreme Court of Georgia is reported at 454 S.E.2d 780 (Ga. 1995) and is appended at A1. The Findings and Recommendations of the

Judicial Qualifications Commission are not reported and are appended at A12.

JURISDICTION

The decision of the Supreme Court of Georgia was entered on March 17, 1995. Petitioner's Motion for Reconsideration, which was timely filed, was denied by the Supreme Court of Georgia on March 30, 1995. This Court has jurisdiction to review the judgment of the Supreme Court of Georgia by Writ of Certiorari pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

1. The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be

> twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...

STATEMENT OF THE CASE

1. *Preliminary Statement*

Judge Linda O'Neal, Chief Magistrate of Peach County Georgia, believing that the five members of the Peach County Board of Commissioners had attempted to unlawfully intimidate her and her court with respect to a pending matter, in violation of a Georgia criminal statute, OCGA § 16-10-97, obtained felony warrants for their arrest.[1] Almost

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[1] OCGA § 16-10-97 Intimidation or obstruction of jurors or court officers.

immediately following the commissioners' arrest fifteen citizens filed complaints with the Judicial Qualification Commission (hereinafter JQC).[2] None of the complaints alleged incapacity, corruption, neglect of office, or a continuing pattern of misconduct. In sum, they were essentially politically motivated non-specific gripes emanating from the publicized arrest of the commissioners. The JQC initially "instructed" O'Neal to meet with its members on January 28, 1994. A13. She met with the JQC "as directed".[3] A13. Following the meeting the JQC conducted an investigation and subsequently filed formal charges against O'Neal. A hearing was held on September 29 and 30, 1994.

O'Neal, as evidenced by the record, committed no crime, breached no tenant of public trust or principle of morality, professional manners, courtesy, or judicial temperament. Instead, "she sought to have done nothing more than was provided for under law".[4] Yet, on the basis of an extremely erroneous and prejudicial hearing record, the

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A person who by threat or force or by any threatening letter or communication: (1) Endeavors to intimidate or impede any grand juror or petit juror or any officer in or of any court of this state or any court of any county or municipality of this state or any officer who may be serving at any proceeding in any such court while in the discharge of such juror's or officer's duties... shall, upon conviction thereof, be punished by a fine of not more than $5,000.00 or by imprisonment for not more than five years, or both. (emphasis added).

[2] Over half of the persons who complained to the JQC attend the same church that two of the Board of commissioners attend. Several are former co-workers of the same two commissioners. And nearly all are related by blood, marriage, or business activity to members of the Peach County Board of Commissions.

[3] At the meeting O'Neal "denied the allegations made against her, both orally and in writing; and stated unequivocally that she had at all times adhered to the highest standards of judicial conduct". A13.

[4] Benham, P.J., Presiding Justice of the Supreme Court of Georgia, dissenting with respect to the majority opinion in this case. A8

Judicial Qualification Commission on December 12, 1994, recommended to the Supreme Court of Georgia that O'Neal be removed from office. A12. O'Neal timely filed in the Supreme Court of Georgia a Petition and Supporting Brief in Objection to the JQC's Findings and Recommendations. The Supreme Court of Georgia in a five to one opinion dated March 17, 1995, held that she had violated the Code of Judicial Conduct and ordered that she be removed from office.[5] A1 Presiding Justice Benham, P.J., sharply criticized the majority's opinion and dissented on freedom of expression grounds and the inappropriateness of considering O'Neal's refusal to accept personal responsibility for the difficulties she experienced with other elected officials of Peach County in determining that she is unfit to hold judicial office. A8 O'Neal filed a timely Motion for Reconsideration, which was denied by the Supreme Court of Georgia in an order dated March 30, 1995. A31

2. *Statement of Facts*

Linda O'Neal , who had never ran for political office before, in a contested election, unseated a sixteen year incumbent for the office of Chief Magistrate of Peach County, Georgia. Her term of office began January 1, 1993. The record in this case shows that hostile reaction to her political upset was present from the moment she took office. Immediately upon assuming her duties she discovered that much of the court's office equipment, supplies, files, financial records and bank statements were missing, most of which were never returned by her predecessor. Besides taking over a looted court she faced uncooperative behavior by the sheriff and the appointed clerk of the County Board of Commissioners.[6, 7, 8, 9] Notwithstanding the problems with the

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[5] *See* the specific canons cited *infra* note 28.

[6] Her written requests to the County Board of Commissioners for

Board's clerk or the Board's failure to provide the court with necessary supplies and equipment,[10] the relationship between O'Neal and the individual members of the Board of Commissioner's remained friendly for the first eight months of her term in office .

Meanwhile the sheriff arbitrarily refused for three months to provide O'Neal with the alarm code to the courthouse, thus frustrating her attempt to fulfill her statutory duties to provide night and weekend bond and commitment hearings, and other essential court services. Further, the sheriff and his deputies grossly failed, on virtually a daily basis, to provide the magistrate court with duties required by statute,[11] and many of the duties that were undertaken were improperly performed. Finally, greatly concerned about the magistrate court's administration of justice, O'Neal researched Georgia case law for guidance with respect to the sheriff and his deputies' non-performance and improper performance of required court related duties. Finding no cases on point she

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essential office equipment and supplies, such as pens, pencils, stationary, and chairs were often either totally ignored or were fulfilled months later. A57.

[7] The equipment and supplies that were eventually provided were often inadequate for the magistrate court to properly function. A57.

[8] The situation was so serious that O'Neal had to frequently spend her own personal money to purchase essential supplies needed for the proper functioning of the court. A58.

[9] O'Neal repeatedly requested budget information needed for proper court administration from the Board's clerk, but the information was never provided. A57.

[10] Georgia Statute, OCGA 15-10-5, states: "The county governing authority shall provide suitable offices and courtrooms for the use of the magistrate court and shall supply all fixtures, supplies, and equipment necessary for the proper functioning of the magistrate court."

[11] *See infra* note 13.

turned to the Georgia Constitution, Statutes, Court Rules and Code of Judicial Conduct, and found what appeared to be authority for her issuance of orders to the court's officers to compel performance of their court related duties.[12] In reliance on this apparent authority she issued four separate orders to the sheriff and his individual deputies on September 13, 1993. Altogether, the orders instructed the sheriff and his deputies to comply with the provisions of OCGA § 15-10-100(b), which requires a sheriff to perform the duties of constables if the county governing authority has not provided for the

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[12] Georgia Constitution Art. VI, Section I, Para. IV, states:

Each court may exercise such powers as necessary in aid of its jurisdiction or to protect or effectuate its judgments; but only the superior and appellate courts shall have the power to issue process in the nature of mandamus, prohibition, specific performance, quo warranto, and injunction. Each superior court, state court, and other courts of record may grant new trials on legal grounds.

Georgia Statute, OCGA § 15-1-3 states, "every court has power":

(1) To preserve and enforce order in its immediate presence and, as near thereto as is necessary, to prevent interruption, disturbance, or hindrance to its proceedings;

(2) To enforce order before a person or body empowered to conduct a judicial investigation under its authority;

(3) To compel obedience to its judgments, orders, and process and to the orders of a judge out of court in an action or proceeding therein;

(4) To control, in the furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto;

(5) To administer oaths in an action or proceeding pending therein and in all other cases when it may be necessary in the exercise of its powers and duties;

(6) To amend and control its processes and orders, so as to make them conformable to law and justice, and to amend its own records, so as to make them conform to the truth; and

(7) To correct its own proceedings before final judgment.

Canon 3C(2) of the Judicial Code of Conduct states:

Judges shall require* their staffs, court officials and others subject to their direction and control to observe the standards of fidelity and diligence that apply to the judges and to refrain from manifesting bias or prejudice in the performance of their official duties.

appointment of constables by the chief magistrate, and OCGA § 15-10-102, which sets forth the powers and duties of constables.[13] O'Neal sent the orders to chief deputy Deese. Initially, deputy Deese told O'Neal that he was serving the orders, but in fact he was not serving the orders. At the JQC hearing he admitted under oath that he had lied to O'Neal. When later he refused to serve the orders, O'Neal, pursuant to statutory law, issued an order to the coroner to serve the orders on the sheriff.[14] According to O'Neal's uncontradicted testimony the coroner after picking up the orders from the magistrate court shortly returned and shoved the orders into her hand and stated, "I am not going to serve that" and "I am not serving anything you say, I don't have to". He then "stormed" out of the court's offices.[15] The coroner also

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[13] Georgia Statute, OCGA § 15-10-100, titled Appointment of constables; compensation; chief constable, states in part: "(a) Unless otherwise provided by local law, the county governing authority may provide for the appointment of constables by the chief magistrate. Constables so appointed shall serve at the pleasure of the chief magistrate. The compensation of constables so appointed shall be fixed by the county governing authority. (b) If no provision is made for the appointment of constables the sheriff and his deputies shall perform the duties of constables...." (emphasis added).

Georgia Statute, OCGA § 15-10-102, sets forth the powers and duties of constables as follows:

(1) To attend regularly all sessions of magistrate court;
(2) To pay promptly over money collected by them to the magistrate court;
(3) To execute and return all warrants, summonses, executions, and other processes directed to them by the magistrate court; and
(4) To perform such other duties as are required of them by law or as necessarily appertain to their offices.

[14] OCGA § 45-16-8 states: If any person makes an affidavit stating (1) that a sheriff is disqualified from acting in any proceeding, which disqualification was not apparent at the outset of the proceeding, or (2) that a sheriff or his deputy refuses to serve a writ or other process, then the clerk of the court from which the process issues shall place the process in the hands of the coroner for execution. The clerk may compel the sheriff to return the writ or other process to the clerk's office in order to allow for execution by the coroner. (emphasis added).

[15] Judicial Qualification Commission formal hearing transcript at p. 339.

handed O'Neal a one sentence letter which stated that he was not authorized to serve the orders, which provided no explanation and cited no authority for such statement.[16]

Following these refusals to serve the orders O'Neal issued a Rule Nisi to determine whether Deese should be held in civil contempt and a Rule Nisi for criminal contempt against the coroner. At Deese's civil contempt hearing attended by the sheriff and most of his deputies, O'Neal, after verbally issuing the orders to the deputies, purged Deese of contempt. On September 24, 1993, after meeting with the sheriff in an attempt to resolve some of the problems, O'Neal issued an indefinite stay with regard to the coroner's hearing.

Approximately an hour later, the Board of Commissioners, at a called meeting in front of newspaper and television reporters, read a letter to O'Neal in which they stated,

> The last straw was your recent group of memos to Sheriff Becham where you ordered him to do certain things. If you have a problem with the Sheriff, it is your responsibility to get with him and work out whatever the situation requires- and not to just serve papers on him. In addition, you have brought contempt charges against his deputy and against the County Coroner. This is not the way to establish a good working relationship with people...

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[16] The coroner's letter stated, " As Peach County Coroner, I am not authorized to serve these Orders."

> We have decided to give you 30 days to see if you can get your act together. If you continue with your present attitude, causing problems and conflict in the county government, we will have no choice but to recind [sic] your salary increase and return you to the original salary granted to you by the previous commissioners.

O'Neal testified at the JQC hearing that she was intimidated by the Board's letter. In response to the threat she obtained felony warrants two months later from a neutral and detached magistrate judge located in a distant county. The judge who issued the warrants testified on deposition that he made an independent determination that there was probable cause to believe that the commissioners had violated OCGA § 16-10-97.[17] O'Neal delivered the warrants to the sheriff seven days later.[18] The commissioner's were then arrested and immediately released on bond.

An appointed special prosecutor dismissed the warrants approximately two months later.[19] Shortly thereafter O'Neal issued a public statement with respect to the dismissal, which also summarized her problems with the sheriff and the board of commissioners. A91.

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[17] *See* statute cited *supra* note 1.

[18] The issuing magistrate called O'Neal on December 22, 1994, the day after issuing the warrants and requested that she verify with the Georgia Attorney General the proper county name to appear on the warrants. She was able to verify the proper county name the afternoon of December 23, 1994. The next day was Christmas Eve so she kept the warrants over the Christmas holidays until the next regular business day, December 28, 1994.

[19] The District Attorney of a neighboring county was appointed special prosecutor by a Peach County Superior Court Judge. He dismissed the warrants on the grounds of insufficient evidence.

Within a few days following the commissioners' arrest a group of fifteen citizens, including the Board of Commissioners, filed similar complaints with the JQC, which expressed concern over O'Neal's actions.[20]

3. *The JQC Inquiry*

Prompted by the complaints, the JQC initially "instructed" O'Neal to meet with its members on January 28, 1994. A13. Appearing without counsel, she met with the JQC "as directed".[21] A13. At the meeting O'Neal, unexpectedly, experienced a highly charged atmosphere of bias against her, which later led to a motion for recusal of three JQC members.[22] Thereafter, the JQC conducted an investigation and subsequently filed formal charges against O'Neal. A hearing was held on September 29 and 30, 1994.

Prior to the hearing two preliminary motions were presented to the JQC, a motion for continuance and a motion for recusal of three members of the JQC. Both were denied. A continuance was necessary because O'Neal's initial attorney was caught in the midst of a criminal trial, a death penalty case from which he could not absent himself. The same problem caused O'Neal to suffer inadequate representation at the pretrial conference two days earlier. O'Neal was notified on September 26, 1994, that she needed to find substitute counsel for the pretrial conference scheduled for September 27, 1994. With less than twenty four hours notice her

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20 *See supra* note 2.

21 *See supra* note 3.

22 Judge Hugh Lawson, who later acted as presiding hearing officer at the JQC hearing told O'Neal during the meeting, without being specific, that she was guilty of judicial intimidation, an allegation which later became part of the formal charges.

substituted counsel appeared at the pretrial conference. The quantum of evidence in the case made it impossible for him on such short notice to become adequately familiar with all of it or to meaningfully discuss the case with O'Neal.[23] Thus, at the hearing when the defense presented its case, favorable evidence was denied admission because notice of it had not been given at the pretrial conference.[24] Moreover, his lack of knowledge about the case caused him to be unaware of the recusal issues.

Her original attorney still in trial, O'Neal appeared at the JQC hearing on September 29, 1994, with her substitute counsel. Her attorney advised the JQC at the beginning of the hearing that his short exposure to the case caused him to believe that he would be ineffective and not be able to adequately represent O'Neal without being given adequate time to prepare.[25] Nonetheless, counsel's motion for a continuance was denied and O'Neal was forced to proceed with ineffective counsel.[26]

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[23] There were hundreds of pages of documents and over 450 deposition transcript pages involved in the matter, which were ultimately admitted into evidence.

[24] e.g., at the JQC hearing O'Neal attempted to admit evidence of positive community support for her as Chief Magistrate Judge of Peach County. Over eighty individuals either wrote letters, signed petitions, or completed favorable court questionnaires, which significantly countered the allegations of negative publicity in the fifteen JQC complaints filed against O'Neal.

[25] O'Neal's substitute counsel's oral motion for continuance included statements such as, "I do not feel like I am adequately prepared to represent Judge O'Neal...I think that I would not be able to adequately represent Judge O'Neal in spite of my humanly, over humanly effort over the past two days to become familiar with these documents. As you are aware, there are, I believe, ten or more depositions taken in this case. There are literally hundreds, hundreds, I think we are into the hundreds of exhibits at this point, thousands of pages of documents...I feel that I would be ineffective." JQC Formal Hearing Transcript. p. 11-17.

[26] The JQC offered to continue the hearing if O'Neal would take a leave of absence from her office during the continuance. Such a coercive offer was not acceptable to O'Neal and she declined the offer.

Following the hearing the JQC issued its findings and recommendations. It found that O'Neal had violated four provisions of the Code of Judicial Conduct, and recommended that she be removed from office. A3.

O'Neal timely filed in the Supreme Court of Georgia a Petition and Supporting Brief in Objection to the JQC's Findings and Recommendations. A53. The JQC filed no response to her petition. In her petition, O'Neal objected to the JQC's findings and recommendations with respect to each and every charge on the grounds that they grossly misstated the facts and recklessly misrepresented the truth.[27] A53. Additionally, she challenged the fairness of the hearing and the lack of due process accorded her during the proceeding. A54.

4. *Decision of the Supreme Court of Georgia*

A. *Majority Opinion*

The Supreme Court of Georgia in a five to one opinion dated March 17, 1995, held that she had violated Canons 1, 2 A and B, 3 B (4), and 3 E (1) of the Code of Judicial Conduct and ordered that she be removed from office.[28] The court characterized the orders she issued to the

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[27] Extremely venomous language was used throughout the JQC's e written findings and recommendations, which grossly overstated and misstated the facts and Petitioner's conduct.

[28] CANON 1. An independent and honorable judiciary is indispensable to justice in our society. Judges shall participate in establishing, maintaining, and enforcing high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2A. Judges shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and

sheriff and his deputies as being in the nature of mandamus, and then discussed the inability of a magistrate court to issue writs of mandamus. It concluded by saying,

> We thus find O'Neal exceeded the authority vested in the magistrate court in issuing orders to require court officers to comply with their statutorily imposed duties.

A5.

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impartiality of the judiciary.

CANON 2B. Judges shall not allow their family, social, political or other relationships to influence their judicial conduct or judgment. Judges shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor should they convey or permit others to convey the impression that they are in a special position to influence them. Judges should not testify voluntarily as a character witness.

CANON 3B. Adjudicative Responsibilities. (4) Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity, and shall require* similar conduct of lawyers, and of staff, court officials, and others subject to their direction and control.

CANON 3E(1). Judges shall disqualify themselves in any proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding; (b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it; (c) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person, or any other member of the judge's family residing in the judge's household*: (i) is a party to the proceeding, or an officer, director, or trustee of a party; (ii) is acting as a lawyer in the proceeding; (iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding; (iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

With respect to O'Neal conducting deputy Deese's contempt hearing, the court opined that "another judge was required to hold the contempt hearing". A6. The court relied on the JQC "factual finding" that O'Neal took the above described "actions in order to intimidate and coerce the sheriff and his deputies".[29] A6.
With regard to this finding the court stated,

> Use of the power of the judicial office to issue orders and to exercise its contempt power in order to intimidate and coerce other elected officials violates Canons 2A, 2B, and 3E(1) and demonstrates wilful [sic] misconduct in office.

A6.

Although the court noted the commissioner's statement that it would reduce O'Neal's "salary was contrary to the express language of OCGA § 15-10-23(b)",[30] it determined that,

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[29] In the motion for reconsideration O'Neal stated the following objection to this finding: O'Neal was never charged with intimidation and coercing or attempting to intimidate and coerce the sheriff and his deputies and thus she was never given an opportunity to defend against that specific accusation, in violation of her due process rights as guaranteed by the Fifth Amendment to the U. S. Constitution as applicable to the states through the Fourteenth Amendment. She respectfully submits to this Court that it is now unfair to use such a finding to determine that she committed willful misconduct in office and thereby violated Canons 2A, 2B, and 3E(1). Notwithstanding this argument, the record contradicts the JQC finding and instead shows that the sheriff and his deputies were not intimidated by the orders and Deese's Rule Nisi Hearing. Deese testified at the JQC hearing that he told the JQC investigator that he thought the problems with the Magistrate Court were minor in nature. [FHT p. 205]. Deese admitted under oath at the JQC hearing, a year after they were issued, that none of the orders had been served [FHT p. 194, 204]; and the documentary exhibits of O'Neal's correspondence and her testimony shows that the sheriff and his deputies still do not properly perform their duties with respect to the Court. A43.

[30] The statute provides that no "magistrate's compensation or supplement shall be decreased during any term of office". A6.

> obtaining *felony warrants* for the entire board based upon a clearly unenforceable threat[31, 32, 33] issued in the midst of a political squabble was not an appropriate or judicious response by O'Neal.[34]

A6.

The court found that O'Neal's obtaining of the arrest warrants and then her public statement[35] after they were dismissed was conduct that violated Canons 1, 2 A, 2 B, and 3 B (4) and was prejudicial to the administration of justice and undermines public confidence in the impartial functioning of judicial officers. A6.

Lastly, the court focused on O'Neal's refusal to "acknowledge that any specific action was improper" and the

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31 O'Neal testified at the JQC hearing that she was intimidated by the Board's letter. *See supra* p. 10.

32 Apparently the court did not agree with O'Neal's assertions in her petition, which argued that the plain language of OCGA 16-10-97 included "attempted intimidation" within its meaning, and that once the threat was made and the intimidation attempted the threat did not have to be carried out for a crime to have occurred. A6.

33 In her motion for reconsideration O'Neal advised the court that she did not obtain felony warrants for the entire board of commissioners based upon "a clearly unenforceable threat," as proven by the fact that the board carried out the threat and reduced her salary after the JQC hearing had occurred, the closing arguments had been submitted, and the hearing record was established. A33.

34 As O'Neal pointed out in her motion for reconsideration, at the time the threat was communicated to O'Neal there was no political squabble existing between the commissioners and O'Neal. A44.

35 The statement was factually accurate and completely true, as supported by the record, and is included in the appendix to this petition. A91.

fact that she did not "accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County." A7. Their opinion ended with this statement:

> We take this refusal into account in determining that O'Neal's acts of wilful [sic] misconduct and prejudicial conduct demonstrates she is presently unfit to hold judicial office.

A7.

The court did not address any due process issues raised in O'Neals petition. A53.

B. *Dissenting Opinion*

Benham, P.J., Presiding Justice, disagreed with the majority's opinion that O'Neal should be removed from office.[36] After stating that "the drastic action of removing a judge from office is one that should be taken with great caution and concern", he said,

> When a judge has been elected by the people, removal from office is tantamount to impeachment...Judges do not lose their right to freedom of expression when they take the bench. In fact, public officials - including judges - are often times called upon to explain their conduct in public forums. Our democratic society is based on a free flow of information and ideas and we have jealously guarded this right for as long as the republic

[36] He did agree with Divisions 1 and 2 of the majority's opinion , but disagreed with Divisions 3 and 4, and the majority's decision to remove O'Neal from office. A8.

> has existed. Donning a robe does not strip a judge of freedom of expression.
>
> The majority opinion does not state how the statement by the judge in the local paper violated the Code of Judicial Conduct or undermined public confidence in the office. Judges are accountable to the public and they should not be unduly punished for explaining their actions to the public. In the absence of a showing that the statement by the judge violated a specific provision of the Code of Judicial Conduct, I must disagree with the majority's determination.

A9.

Justice Benham also disagreed with the majority's opinion in finding O'Neal unfit to hold judicial office on the basis that she "refused to acknowledge that any specific action was improper" and did not "accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County". He commented further on this part of the majority's opinion and stated,

> This statement is a slim reed indeed upon which removal from office is justified. We must keep in mind that, while the actions taken by the judge were unauthorized, she sought to have done nothing more than was provided for under law. Therefore, I disagree with the majority's determination in Division 4 that refusal to admit fault is justification for removal from office.

A9.

In her motion for reconsideration, which was denied by the court on March 30, 1995, O'Neal challenged the court's opinion with respect to her public statement on First Amendment grounds, and the court's consideration of her refusal to acknowledge that any specific action was improper and her refusal to accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County on Fifth Amendment grounds. A45. Also, In her motion for reconsideration, O'Neal challenged on Fifth Amendment grounds the lack of due process accorded her by the JQC, and the denial by the JQC of the motion for continuance presented by her attorney. A48..

REASONS FOR GRANTING THE WRIT

I. This case raises issues of exceptional legal importance for judges who express public opinion about social, political, or governmental matters.

A. The Supreme Court of Georgia violated a judge's right to freedom of expression in contravention of the First Amendment to the United States Constitution by removing her from office for making a truthful public statement about her difficulties with other elected county officials, who had violated the law and failed in the performance of their statutory duties.

The result of the decisions below is that judges in Georgia who speak out against corruption, malfeasance, misfeasance, or nonfeasance, committed by elected or non-elected government officials, or who "explain their

conduct in public forums",[37] risk being removed from office at the arbitrary or retaliatory whim of those in power, while judges who remain silent have a better chance at remaining in office because of their silence.

Moreover, as a published opinion, the decision below by the Supreme Court of Georgia is likely to receive widespread study and consideration throughout the State of Georgia and the nation. Given the novel nature of the facts and the presence of a First Amendment issue, and the few reported cases involving removal of a judge for conduct involving freedom of speech, the case could be used to unjustifiably restrict the First Amendment rights of judges. Accordingly, its misapplication by the courts and potential chilling effect upon judges who might otherwise express their opinion with respect to "matters of legitimate public concern"[38] is significant.

In this case, the First Amendment issue is similar to the one involving an elected Texas Justice of the Peace who brought suit in federal court against the Texas Commission on Judicial Conduct and its commissioners for a public reprimand of him for making statements critical of the administration of the county judicial system. Scott v. Flowers, et al., 910 F.2d 201 (5th Cir. 1990).[39] In Scott, the

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[37] *Quoting* from Justice Benham's dissent. A8.

[38] *Quoting* from Scott v. Flowers, et al., 910 F.2d 201 (5th Cir. 1990).

[39] Soon after taking office, Scott became concerned about what he perceived to be an injustice in the administration of the county court system. Apparently, the great majority of defendants who appealed their traffic offense convictions from justice or municipal courts to the Fort Bend County Court-at-law during Scott's term in office succeeded in having the charges against them dismissed or the fines sharply reduced.[1] This practice, Scott believed, unfairly allowed those "in the know" to violate the traffic laws repeatedly and with impunity while penalizing less sophisticated individuals who committed the same offenses.

court held "that the Commission could not constitutionally reprimand Scott for making public statements critical of the court-at-law and the district attorney's office".

Scott, 910 F.2d at 213.

In September 1983, Scott took his concerns to the local government and the citizenry by writing an "open letter" to county officials. In the letter, Scott attacked the district attorney's office and the county court-at-law for dismissing so many traffic ticket appeals and called upon the county officials to offer suggestions to remedy the problem. If the county refused to change this practice, Scott concluded, the public at least should be made aware of it, and the court-at-law "would be really busy then."[2]

The letter was circulated to the local press and prompted several newspaper articles. It also attracted the attention of Thomas Culver, one of the judges of the court-at-law, who wrote Scott an angry letter criticizing him for not raising his concerns privately. Eventually, both the newspaper articles and Culver's letter found their way into the files of the Texas Commission on Judicial Conduct (the "Commission").[3]

In November 1983, the Commission's executive director, defendant Robert C. Flowers, advised Scott by letter that he had been the subject of several complaints received by the Commission.[4] Scott responded to the complaints both in writing and in person, having been invited by Flowers to appear informally before the Commission.

On March 19,1984, the Commission issued a formal public reprimand of Scott. After first acknowledging that Scott's intentions were good and his personal integrity was not at issue, the Commission then chided him for being "insensitive" in certain "written and oral communications" addressed both to the litigants in his courtroom and to the public at large. Such "insensitivity," the Commission stated, was inconsistent with the proper performance of Scott's duties as justice of the peace and served only to "cast public discredit upon the judiciary." The Commission concluded the reprimand with a warning, advising Scott to be "more restrained and temperate in written and oral communications in the future."

Although the Commission failed to cite any examples of Scott's alleged insensitivity to litigants,[5] it was quite specific in identifying the public comments it found to be objectionable. The Commission criticized Scott both for his statement in the open letter that the county court-at-law "would be really busy" if the public realized that an appeal of a traffic ticket was tantamount to a dismissal and for his comment to a reporter, in connection with the letter, that "the county court system is not interested in justice."[6]

Scott v. Flowers, et al., 910 F.2d 201 (5th Cir. 1990).

The public statement issued by O'Neal, which the court found violated the Code of Judicial Conduct, was a very tempered expression of the facts leading up to and the reasons for her past official actions. It was the type of speech that falls well within the core concepts of First Amendment protection. O'Neal's removal from office was based in whole or in part on her use of such speech, and the court, without explaining how such speech violated the Code of Judicial Conduct or undermined public confidence in the judiciary or her office has violated her First Amendment Rights.[40]

II. This case raises a novel issue of great legal significance for judges who are called before judicial disciplinary bodies on charges of misconduct.

A. The Supreme Court of Georgia violated a judge's due process rights in contravention of the Fifth Amendment to the United States Constitution by removing her from office for refusing to acknowledge that any specific action she had taken was improper and for refusing to accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County, who had violated the law and failed in the performance of their statutory duties.

The decision below by the Supreme Court of Georgia, standing as a precedent decision, will put judges in Georgia in risk of being removed from office if they are charged with misconduct and they refuse to acknowledge that any specific action they have taken was improper or refuse to accept

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[40] *See* Justice Benham's dissent. A9.

personal responsibility for the difficulties they have experienced, or they deny the charges against them. The decision is oppressive and coercive, and it negates any notion of fundamental fairness in violation of the due process clause of the Fifth Amendment.

The Supreme Court of Florida has recently expressed the following opinion concerning judges who refuse to admit wrongdoing or refuse to express remorse: "Every judge who believes himself or herself truly innocent of misconduct has a right -- indeed, an obligation -- to express that innocence to the Commission ..." Inquiry Concerning A Judge No. 93-62, RE: P. Kevin Davey, Supreme Court of Florida (1994).

The Supreme Court of Georgia previously adopted a statement with respect to denial of guilt and remorsefulness, which in part states:

> Can it be said that one who denies guilt and, therefore, is not remorseful for his wrongdoing has been rehabilitated? The question is best analyzed and answered by the logic of In the Matter of Hiss, Mass. 333 NE2d 429, 437 (1975). 'Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal act he honestly believes he did not commit. For him, a rule requiring admission of guilt and repentance create a cruel quandary: he may stand mute and lose his opportunity; or he may cast aside his hard retained scruples and, paradoxically, commit what he regards as perjury to prove his worthiness to practice law.

> Men who are honest would prefer to relinquish the opportunity conditioned by this rule ....'

In The Matter Of Mitchell, 249 Ga. 280 (290 SE2d 426) (1982).

In this case, the record substantially shows that O'Neal sincerely and genuinely believed her conduct to be correct given all the relevant circumstances. Her refusal to acknowledge any improper action or to accept personal responsibility for the difficulties she experienced with the other elected Peach County officials is a protected right guaranteed by the Fifth Amendment.

Accordingly, the decision by the court to remove O'Neal from office, which was partially based on her refusal to acknowledge that any specific action taken by her was improper and her refusal to accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County, violated the Fifth Amendment to the U. S. Constitution as applicable to the states through the Fourteenth Amendment.

III. This case raises the issue of adequacy of legal counsel for judges called before judicial disciplinary bodies on charges of misconduct.

A. The Supreme Court of Georgia violated a judge's due process rights in contravention of the Fifth Amendment to the United States Constitution by removing her from office while the hearing record relied upon for the removal determination showed that she was denied adequate legal counsel at the hearing.

This case presents an extremely gross example of inadequate legal representation and ineffective assistance of counsel. The factual background was set forth earlier in this petition.[41] Briefly, O'Neal was notified by her attorney's office on September 26, 1994, that she would need to find substitute counsel to attend the pre-trial conference scheduled for September 27, 1994. She was able to make arrangements with another attorney to attend the conference. The substitute counsel also appeared with O'Neal two days later at the hearing on September 29, 1994.

At the hearing on September 29, 1994, substitute counsel moved for a continuance. He made the following points unequivocally clear, as shown in the record: he was unprepared to proceed; he believed that he could not adequately represent O'Neal; and he thought he would be ineffective. The JQC denied his motion. At that point there were thousands of pages of documents and exhibits, and hundreds of pages of depositions in the case. The record was exceptionally voluminous. Most importantly he knew virtually nothing about the witnesses or his client. He could not cross-examined the prosecution witnesses effectively because he did not have a meaningful opportunity to read the case documents or to discuss the case with O'Neal. For the same reason he could not present an adequate case for the defense.

It was under those very unfair conditions that the JQC hearing record was produced that ultimately the Supreme Court of Georgia used to form their opinion. Thus, O'Neal was removed from office on the basis of a hearing record that is tainted by grossly inaccurate and incomplete information, and misstatements of fact.

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[41] See supra p. 12-13.

Accordingly, O'Neal was denied the most basic notions of fundamental fairness by not being accorded an opportunity to acquire adequate legal representation for the JQC hearing, and thus her Fifth Amendment Rights were violated.

CONCLUSION

The Petition for Writ of Certiorari should be granted for the reasons set out above.

Respectfully Submitted,

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Petitioner, pro se
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(912) 825-1678

IN THE SUPREME COURT OF GEORGIA
Decided March 17, 1995

INQUIRY CONCERNING

A JUDGE # 94-70

PER CURIAM.

Following an investigation and formal hearing, the Judicial Qualifications Commission ("JQC") recommended that respondent Judge Linda O'Neal, Chief Magistrate of Peach County, be removed from office. We accept the recommendation.

The JQC received fifteen complaints regarding the conduct of Judge O'Neal. The JQC investigated the complaints and issued a Notice of Formal Proceedings, which set forth six separate charges.

The evidence before the Commission showed that O'Neal had won a contested election for the office of Chief Magistrate of Peach County, unseating the incumbent of sixteen years. The evidence also showed a pattern of an uncooperative working relationship between O'Neal and the County Board of Commissioners.

The evidence relating to the most serious charges showed that on September 13, 1993, O'Neal issued four separate orders to the sheriff and each of his deputies. Collectively, these orders required the sheriff and his deputies to comply with the provisions of OCGA § 15-10-100 (b), which requires a sheriff to perform the duties of constable if no provision is made for appointment of constables, and

OCGA § 15-10-102, which sets forth the powers and duties of constables.[1] O'Neal sent the orders to Deputy Deese at the Sheriff's Department to serve. When Deese refused to serve the orders, O'Neal issued an order directing the coroner to serve the orders. The coroner responded by a letter that he was unauthorized to serve the orders. O'Neal then issued a Rule Nisi to determine whether Deese should be held in civil contempt and a Rule Nisi for criminal contempt against the coroner. At the civil contempt hearing on September 23, 1994, O'Neal stated she was the plaintiff and called and cross-examined Deese. O'Neal verbally issued the orders to the sheriff's deputies, the majority of whom were in attendance, and stated that Deese was purged of contempt. On September 24, 1994, O'Neal issued an indefinite stay with respect to the coroner's hearing.

Later that same day, at a called meeting, the Board publicly read a letter to O'Neal in which the Board stated,

> We have decided to give you 30 days to see if you can get your act together. If you continue with your present attitude, causing problems and conflict in the county government, we will have no choice but to recind [sic] your salary increase and return you to the original salary granted to you by the previous commissioners.[2]

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[1] The statutorily mandated powers and duties of the sheriff in the absence of an appointed constable are to attend regularly all sessions of magistrate court; to pay promptly money collected to the magistrate court; to execute and return all warrants, summonses, executions, and other processes directed to them by the magistrate court; and to perform such other duties as are required by law. OCGA § 15-10-102.

[2] The present Board had given O'Neal a $10,000 increase, after the previous commissioners had reduced O'Neal's salary $20,000 from that given her predecessor.

Relying upon this statement, O'Neal obtained felony warrants from a magistrate from a distant county, two months after this statement was made, against the members of the Board for intimidation of a court officer in violation of OCGA § 16-10-97. O'Neal held the warrants in her office for approximately a week before having them served. The District Attorney of Houston County was appointed special prosecutor and ultimately dismissed the warrants. Following the dismissal, O'Neal issued a lengthy public statement justifying her actions in seeking the warrants and detailing her disputes with the board of commissioners and the sheriff.

The Judicial Qualifications Commission, following a hearing, issued its findings and recommendations. The Commission found that four charges had been proven by clear and convincing evidence,[3] that such conduct constitutes a violation of Canons 1, 2 (A) and (B), 3B (4) and (7), and 3E (1), and recommended that O'Neal be removed from office.

1. Discipline may be imposed only upon a showing by clear and convincing evidence, JQC Rule 7 (e), that the judge engaged in "willful misconduct in office, willful and persistent failure to perform the duties of a judge, habitual intemperance, or conduct prejudicial to the administration of justice which brings the judicial office into disrepute." JQC Rule 4 (b).[4] We interpret "willful misconduct in office" to mean actions taken in bad faith by the judge acting in her judicial capacity. "Conduct prejudicial to the administration of justice" refers to inappropriate actions taken in good faith

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[3] The JQC found that allegations relating to one charge were arguably within a magistrate's duties and, standing alone, were insufficient to warrant disciplinary action.

[4] A judge may also be removed from office if he or she is laboring under a "disability that seriously interferes with the performance of the judge's duties which is or is likely to become permanent." JQC Rule 4 (b). That provision is not involved in this matter.

by the judge acting in her judicial capacity, but which may appear to be unjudicial and harmful to the public's esteem of the judiciary. Prejudicial conduct may also refer to actions taken in bad faith by a fudge acting outside her judicial capacity. Whether discipline should be imposed and the severity of discipline must be

> determined through a reasonable and reasoned application of the text [of the Code of Judicial Conduct] and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

Georgia Code of Judicial Conduct, preamble (1994). With these principles in mind, we examine the allegations of misconduct.

2. O'Neal's orders of September 13, 1994, directed the sheriff and his deputies to perform the very duties the law imposes. O'Neal contends that the orders address her concern over a lack of courtroom security, delays by the sheriff in serving warrants and in turning over money collected by the sheriff's department. She characterizes the orders as a "remedial form of notice" to make her court officers aware of their responsibilities. She also contends that such orders are authorized by Ga. Const. of 1983 Art. VI, Sec. I, Par. IV and OCGA § 15-1-3 (4), which provides that every court has the power "to control . . . . the conduct of its officers."

Paragraph four of OCGA § 15-1-3 is a codification of a power inherent in the courts. Lowe v. Taylor, 180 Ga. 654, 658 (180 SE 223) (1935). The inherent power of a court should not be used as a weapon in political power struggles, but it "must be carefully preserved" and "cautiously used."

Grimsley v. Twiggs County, 249 Ga. 632, 634 (1982). Reliance upon a court's "inherent power" is inappropriate and unnecessary where specific remedies exist. See McCorkle v. Judges of Superior Court, 260 Ga. 315, 316 (392 SE2d 707) (1992) ("inherent power is not a sword but a shield").

The appropriate remedy to require the proper performance by an official of a statutorily imposed duty is to seek a writ of mandamus. See Grimsley, 249 Ga. at 632 ("[m]andamus is the proper 'remedy to compel a public officer or a county board to perform a duty imposed by law'"), quoting Mattox v. Board of Education, 148 Ga. 577, 581 (97 SE 532) (1918); OCGA § 9-6-20. Although these orders appear to be in the nature of mandamus, a magistrate court, does not have the power to issue writs of mandamus, Ga. Const. Art. VI, Sec. I, Par. 4, nor was the required notice given or hearing held, OCGA § 9-6-27. O'Neal would have certainly been authorized to file a petition for mandamus in the superior court, but she was not authorized to issue an order requiring the performance of an official duty. See McCorkle, 260 Ga. at 317 n. 4 (Hunt, J., concurring) (remedy for judges of inferior courts for whom county has failed to appropriate necessary funds for operation of court is limited to mandamus in the superior court). We thus find O'Neal exceeded the authority vested in the magistrate court in issuing orders to require court officers to comply with their statutorily imposed duties.

Additionally, a review of the transcript of the hearing on the rule nisi directed toward Deese demonstrates that O'Neal had been become personally embroiled in the matter and, therefore, under Dowdy v. Palmour, 251 Ga. 135, 142 (304 SE2d 52) (1983), another judge was required to hold the contempt hearing. See also Canon 3E (1) ("Judges shall disqualify themselves in any proceeding in which their

impartiality night [sic] reasonably be questioned"). The JQC made the factual finding that O'Neal took these actions in order to intimidate and coerce the sheriff and his deputies. Use of the power of the judicial office to issue orders and to exercise its contempt power in order to intimidate and coerce other elected officials violates Canons 2A, 2B, and 3e (1) and demonstrates wilful [sic] misconduct in office.

3. The statement by the Board of Commissioners that it would reduce her salary was contrary to the express language of OCGA § 15-10-23 (b) (no "magistrate's compensation or supplement shall be decreased during any term of office"). However, obtaining felony warrants for the entire board based upon a clearly unenforceable threat issued in the midst of a political squabble was not an appropriate or judicious response by O'Neal. See Canon 2A (Judges . . . "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"). Following the dismissal of the felony warrants, O'Neal issued to a local paper a written public statement in which she detailed the circumstances leading up to her seeking the felony warrants. The statement appears to be an attempt to influence public opinion in her favor and against other Peach County officials, including the sheriff and board of commissioners. Such conduct violates Canons 1, 2A, 2B, and 3B (4) and is prejudicial to the administration of justice and undermines public confidence in the impartial functioning of judicial officers.

4. O'Neal refused to acknowledge that any specific action was improper; nor did O'Neal accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County. We take this refusal into account in determining that O'Neal's acts of wilful [sic] misconduct and prejudicial conduct demonstrate she is

presently unfit to hold judicial office.[5] Therefore, we order that Judge Linda O'Neal, Chief Magistrate of Peach County, be removed from office.

Removal from office.

All the Justices concur, except Hunt, C.J., not participating, and Benham, P.J., who concurs in part and dissents in part.

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[5] After a review of the entire record, we find that the remaining charges have not been proven by clear and convincing evidence or that they are cumulative; therefore, they form no independent basis for our decision.

BENHAM, Presiding Justice, dissenting.

While I agree with Divisions 1 and 2 of this court's opinion, I cannot agree with Divisions 3 and 4; therefore, I must respectfully dissent.

The drastic action of removing a judge from office is one that should be taken with great caution and concern. When a judge has been elected by the people, removal from office is tantamount to impeachment; therefore, the violations of the Code of Judicial Conduct should be proven by "clearn and convincing" evidence. Divisions 1 and 2 of the majority opinion clearly show a violation of the Code of Judicial Conduct and I concur in those determinations. However, my concurrence dissolves upon reaching Divisions 3 and 4 of the majority opinion. In Division 3, the majority states:

> The statement [an account by the judge in the local newspaper of what transpired and her motivations for taking the actions she took] appears to be an attempt to influence public opinion in her favor and against other Peach County officials, including the sheriff and board of commissioners. Such conduct violates Canons 1, 2A, 2B, and 3B(4) and is prejudicial to the administration of justice and undermines public confidence in the impartial functioning of judicial officers.

Judges do not lose their right to freedom of expression when they take the bench. In fact, public officials - including judges - are often times called upon to explain their conduct in public forums. Our democrataic society is basedon a free

flow of information and ideas and we have jealously guarded this right for as long as the republic has existed. Donning a robe does not strip a judge of freedom of expression.

The majority opinion does not state how the statement by the judge in the local paper violated the Code of Judicial Conduct or undermined public confidence in the office. Judges are accountable to the public and they should not be unduly punished for explaining their actions to the public. In the absence of a showing that the statement by the judge violated a specific provision of the Code of Judicial Conduct, I must disagree with the majority's determination as to Division 3.

In Division 4 of its opinion, the majority apparently finds evidence of aggravation and states:

> O'Neal refused to acknowledge that any specific action was improper; nor did O'Neal accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County. We take this refusal into account in determining that O'Neal's acts of wilful misconduct and prejudicial conduct demonstrate she is presently unfit to hold judicial office.

This statement is a slim reed indeed upon which removal from office is justified. We must keep in mind that, while the actions taken by the judge were unauthorized, she sought to have done nothing more than was provided for under law.[6] Therefore, I disagree with the majority's determination in

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[6] The judge sought to have the sheriff attend the sessions of court and to prevent the Board of Commissioners from reducing her statutorily-mandated salary.

Division 4 that refusal to admit fault is justification for removal from office.

The decision of the court follows the recommendation of the Judicial Qualifications Commission; however, noticeably absent - though I recognize it is not required by the rules governing the JQC - is a finding by the JQC as to why some lesser punishment is not applicable. In the five years I have served on the Supreme Court of Georgia, this court has never seen fit to remove a judge from office. Instead of ordering this judge from office, I would remand the case to the JQC for a finding as to why lesser punishment is not appropriate.

BEFORE THE COMMISSION
ON JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE #94-70
JUDGE LINDA O'NEAL DOCKET NO. 94-70

FINDINGS AND RECOMMENDATIONS OF THE COMMISSION

A.

STATEMENT OF THE CASE

This matter originated in December 1993 when news articles appeared in The Ledger-Tribune (Peach County), The Macon Telegraph and The Atlanta Journal-Constitution publicizing the arrest of all five (5) members of the Peach County Commission pursuant to a felony warrant requested by Linda O'Neal, the Chief Magistrate of Peach County, Georgia (hereinafter "Respondent") and issued by J. Kendall Jordan, the Chief Magistrate of Hart County, Georgia. [R. 1-6].

Almost immediately after the publication of such articles, the Commission received a total of fifteen (15) complaints from citizens of Peach County expressing concern, and in some instances outrage, over the conduct of the Respondent. [R. 7-26].

As more fully shown in said complaints, these citizens characterized Respondent and/or her conduct as "overstepping her boundaries; an insult to the county;

disturbing; an embarrassment to the community; an attempt to intimidate and bulldoze other county officials; out of control; lost touch with reality; stumbling from one controversy to another; negative publicity harmful to the county; deeply concerned and outraged; and conduct very inappropriate to her office."

By letter dated January 25, 1994, Charles Bartlett, Chairman of the Peach County Commission, advised the Commission of a series of continuing problems between Respondent and various county officials during Respondent's first year in office and expressed the opinion that the Judge had clearly abused the powers of her office; been an embarrassment to the people of Peach County; and could not be effective in her position over the remaining term of her office. [R. 29-43].

By letter dated January 10, 1994, the Commission provided copies of the thirteen (13) complaints received as of that date to Respondent and instructed her to meet with the Commission on Friday, January 28, 1994. [R. 27-28]. Copies of the Bartlett letter and additional complaint were subsequently provided to Respondent. Respondent met with the Commission as directed; denied the allegations made against her, both orally and in writing; and stated unequivocally that she had at all times adhered to the highest standards of judicial conduct. [R. 44-45].

Following this conference and by letter dated January 31, 1994, Respondent was notified that the Commission had voted to investigate the complaints filed against her and advised of her rights under Commission Rule 4. [R. 46-47]. By letter dated February 11, 1994, Respondent adopted and incorporated by reference her letter of January 28, 1994 and

again denied any willful misconduct in office or any conduct prejudicial to the administration of justice which brings the judicial office into disrepute. [R. 48].

Upon completion of its investigation, the Commission determined that Formal Proceedings should be instituted and a Notice of Formal Proceedings was mailed to Respondent by certified mail on March 31, 1994. [R. 49-53].

By letter dated April 11, 1994, the Commission transmitted to Respondent all materials required by Rule 8(a). [R. 54].

On or about May 4, 1994, Respondent's Answer to the Notice of Formal Proceedings generally denying all allegations was timely filed. [R. 55-65]. Although this answer contained numerous special defenses, no ruling was sought and none was made respecting the same, and the matter was subsequently heard by the full Commission on its merits[7].

A pre-hearing conference was scheduled for September 27, 1994 by Judge Hugh Lawson, the judicial Commission member designated by the Chair to preside in this matter. A transcript of said conference is included in the record being transmitted to the Clerk of this court simultaneously with this pleading. [R. 66-81].

Immediately prior to the scheduled pre-trial conference, Respondent filed in this Court an emergency

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[7] Pursuant to the provision of Rule 1(d), Judge Robert B. Struble, a former judicial member of the Commission, was appointed to serve in lieu of Judge Alice D. Bonner, who voluntarily recused due to a prior partnership with counsel for the Commission.

motion for a continuance of the scheduled pre-trial conference, as well as the Formal Hearing then scheduled to begin on September 29, 1994. [R. 82-87]. This Motion was opposed by the Commission [R. 88-117], and by order dated September 26, 1994, such Motion was denied without opinion. [R. 118].

At the outset of the Formal Hearing, Respondent's Motion to Recuse [R. 119-123] and her oral motion for continuance were denied. [FHT 1-18]. The complete transcript (445 pages), together with some 168 exhibits and 6 Defendant's exhibits received in evidence, is also included in the record being transmitted to the Clerk of this Court simultaneously with this pleading. To avoid confusion, this Formal Hearing transcript will hereinafter be cited as [FHT p. _____].[8]

B.

SUMMARY OF THE EVIDENCE

At the Formal Hearing, Commission Counsel presented five (5) live witnesses; five (5) witnesses by deposition; and introduced 168 exhibits. Respondent was her only witness and introduced only six (6) exhibits [unnumbered "Defendant's exhibits."] The evidence thus presented can be summarized as follows:

Respondent, a non-lawyer, who ran for office on a political platform against government corruption and in favor of change [Closing Statement of Respondent, p. 2] and who

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[8] Prior to the hearing, depositions were taken and original transcripts of those introduced into evidence are likewise being transmitted to the Clerk of this Court simultaneously with this pleading.

apparently has no understanding of the proper role and function of a judge, has been at war, both privately and publicly, with almost every other elected official in Peach County, Georgia, virtually since the day she took office in January 1993. This longstanding battle was initially conducted through correspondence in which Respondent made repeated and almost continuous demands on various County officials. [Ex. 1-70]. The battle became more intense in September 1993 when Respondent issued a set of four (4) identical orders to each and every employee of the Sheriff's Department of Peach County, Georgia (some 56 in number), regardless of the position held by such employees. [FHT 190; Ex. 71]. The issuance of such orders appears to be beyond the power and authority of a magistrate (O.C.G.A. § 15-10-2), but in any event, there is absolutely no evidence in this record that the Sheriff's Department had ever refused to serve and/or deliberately delayed the service of any papers issuing from the Magistrate Court. Obviously, the Sheriff's Department has other duties to perform and is not required to be available to the Magistrate Court at the whim of the Magistrate. In fact, the uncontradicted testimony of the Sheriff is that he did not have adequate staff and that often the persons on whom warrants were to be served were not able to be located. [FHT 17, 170-174]. Under these circumstances, the Commission is compelled to conclude that the issuance of these orders was nothing more than an intentional misuse of judicial power in a blatant attempt to intimidate and/or coerce the duly elected Sheriff of Peach County, as well as every secretary, clerk, radio dispatcher, and deputy in the Sheriff's Department.

In addition, and as further evidence of this blatant misuse and abuse of the power of her office, when said orders were not served promptly enough to satisfy Respondent, she

issued a Rule Nisi to the Chief Deputy Sheriff for civil contempt. [FHT, p.191; Ex. 74]. This was followed by an order to the County Coroner to serve the Sheriff [Ex. 81], and when the Coroner, after seeking legal advice, responded that he lacked authority to serve the orders, he was issued a Rule Nisi for Direct Criminal Contempt. [Ex. 75, 80 and 166].

The transcript of the Rule Nisi hearing for the Chief Deputy Sheriff reveals the real motivation for the Respondent's actions in this instance. Among other things, she wrongfully denied a motion to recuse filed by counsel for the accused; acted as both prosecutor and judge; and completely failed to follow the procedures outlined by this Court in Dowdy v. Palmour, 251 Ga. 135, in order to meet due process requirements. In addition, she made no finding of contempt, but declared that the accused had purged himself of contempt after each employee of the Sheriff's Department who was present in court stated his/her name on the record. However, no written order has ever been entered in this matter. [Ex. 167; FHT 194].

The contempt hearing for the Coroner was continued indefinitely after a conference between counsel for the Coroner and the Respondent. No order of any kind was ever entered, and so far as appears, this citation is still a pending matter. [Ex. 86; FHT 86, 143].

The scenario of events surrounding the issuance of these orders is best understood by reviewing the various documents evidencing the actions taken by the Respondent during the period September 13-22, 1993. [Ex. 71-81]. On September 13, 1993, the ex parte orders were issued [Ex. 71]; on September 20, 1993, Respondent's request for a salary increase was denied [Ex. 72, 73]; on September 20, 1993

contempt citations were issued which, among other things, provided; "Said accused contemner may bring legal counsel to such hearing if desired" [Ex. 74]; and when both the Chief Deputy Sheriff and the Coroner refused to serve the ex parte orders, Respondent appointed her clerk to serve the Chief Deputy [Ex. 82] and another individual, Brooks Livingston, to serve the Sheriff [Ex. 79]. The so-called contempt hearing for the Chief Deputy followed [Ex. 167]; the scheduled contempt hearing for Coroner Poole was continued; and Respondent refused a request by the County Commissioners to meet with them to discuss "the office of Magistrate Judge." [Ex. 83, 84].

This bizarre series of events was followed by the County Commissioners mailing the Respondent a copy of a statement read at the Commission meeting which she refused to attend [Ex. 85], and Respondent's rather curt reply in which she characterized the statement as "diatribe." [Ex. 81]. It should be noted that nowhere in this reply or elsewhere in this record is there any mention of the alleged "threat" which subsequently gave rise to the felony warrants Respondent obtained against all five (5) County Commissioners in December 1993 for an alleged violation of O.C.G.A. § 16-10-97. It should also be noted that, for whatever reason, from and after the September 27, 1993 letter, Respondent always signed her correspondence over the title "The Honorable Linda O'Neal." [Ex. 87 forward].

Respondent's long running battle with the County Commission continued unabated. After successfully getting the Commission to designate the September 24, 1993 statement as "official action" and without further discussion with the Commission, Respondent, by letter dated November 15, 1993, forwarded a copy of the September 24, 1993

statement to the District Attorney of the Macon Judicial Circuit and requested that the matter be presented to the Peach County Grand Jury. [Ex. 101]. Because the District Attorney did not act on this request with the promptness which Respondent felt was appropriate under the circumstances, she concluded, "I was being stonewalled." [FHT 356]. Respondent testifies she thereafter consulted a Judge Hughes in Twiggs County; Danny Porter, the District Attorney in Gwinnett County; a Judge Judy Cooper from Clay County; Judge Wayne Purdom; and some unnamed individua in the Attorney General's Office concerning the possibility of issuing warrants against the Commissioners, and while each felt her actions to be justified, nevertheless, all refused to issue the requested warrants. [FHT 357-364].[9]

Apparently determined to find some judicial officer who would issue felony warrants against the five (5) individuals constituting the governing authority of Peach County based solely upon the statement of September 24, 1993, Respondent, without consulting any other judicial officer in the entire Macon Judicial Circuit, telephoned Magistrate Kendall Jordan in Hartwell, Hart County, Georgia, whom she describes as "a neutral, detached magistrate" she had met at a seminar in Athens in August or September of 1993 [FHT 359-361].[10]

[9] Although Respondent's counsel states in his post-trial memorandum that "Judge O'Neal is a product of business where you are taught to put everything in writing to document issues and request" (Closing Statement of Respondent, p.6) and although the record is replete with letters documenting practically every action taken by Respondent, including writing some twelve (12) different letters to various county officers on the same day (ex. 55-66), there is not one single document in this record which even remotely supports Respondent's uncorroborated testimony concerning the alleged conversations with other judicial officers.

[10] On cross-examination, Respondent admits that one of the reasons she went to Judge Jordan was because he had previously discussed with her similar

After faxing her affidavit to Judge Jordan and being advised that he would issue the requested warrants, Respondent personally typed the warrants in her office in Peach County; assigned numbers to each warrant; drove to Hartwell, Georgia; had the warrants signed by Judge Jordan; brought the signed warrants back to her office where they remained unsealed and undocketed until she personally delivered them to the Sheriff for execution approximately one (1) week later [FHT 363, 395-397, 433-437];[11] and subsequently sought reimbursement from the County for her mileage to Hartwell claiming it was incurred in the performance of official duties. [Ex. 164; FHT 406].

At approximately 9:00 A.M. on the morning of December 28, 1993, Respondent personally delivered the signed warrants to the Sheriff of Peach County. Within fifteen (15) minutes after the warrants were delivered, the Sheriff's office began receiving calls from news media all over Georgia, and the individual County Commissioners received similar calls even before being told they were being arrested. [FHT 82-83; 208-209; 243-244; 247].

The Commissioners were subsequently booked and fingerprinted, but after an investigation by the District Attorney of Houston County, specially appointed to investigate the charges, all charges were dismissed. [FHT 83-84].[12] Immediately following this dismissal, Respondent

problems he had experienced with government officials. (FHT 394). "Other Judges are more likely to grant a favor requested by another Judge." In Re Inquiry Relating to Alvord, 847 P.2d 1310 (Kans.1993).

[11] In answer to a question from Commission Member Blackstock, Respondent conceded that she did not hold other warrants issued from her office in December until after Christmas.

issued a public statement to the Byron Gazette in which she stated her disagreement with the decision and again sought to justify her actions in her long running battle with the County Commission. [Ex. 125; FHT 406].

To say that the activities detailed above generated publicity may well be the understatement of the day. One need only examine the news articles in this record [R. 1-6; Ex. 160] and the complaints filed with the Commission [R. 7-26] to observe the public ridicule, embarrassment and disgust to which such conduct exposed not only the Magistrate Court of Peach County, but the entire judicial system of this State.

The final shot in Respondent's all-out war against the County Commission occurred only three (3) days prior to the commencement of the Formal Hearing. At that time, Respondent filed a civil lawsuit against the Commissioners, and other county officials, in the Superior Court of Peach County, Georgia, which contains 292 numbered paragraphs and 61 typewritten pages and which generally seeks to rehash many, if not all, of the issues giving rise to this proceeding. [Ex. 168].

As thus viewed, the personal animosity and political motivation which obviously prompted a judicial officer to conduct herself in such a disgusting and demeaning manner literally leap from the pages of this record. However, if further evidence is needed, it can best be seen in Respondent's conversation of October 1, 1993 with County

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[12] The only reported case construing this provision involves physical threats related to judicial decision making and does not appear to relate to a judge's communications c' interpersonal relations with other elected county officials or their employees. Moon v. State, 199 Ga. App. 94, 404 S.E. 2d 273 (1991).

Commissioner Jack Taylor. When asked by Commissioner Taylor why she had reduced the amount previously charged for serving warrants, Respondent replied with a gesture:

> ... because you and Charles Bartlett stuck your nose into something that didn't concern you ... this issue is between me and the Sheriff. [FHT 241-243].

Commissioner Taylor reported this conversation to Chairman Bartlett by letter dated October 4, 1993 (Ex. 90), and although Respondent denies the statement attributed to her by Commissioner Taylor, the Commission finds the testimony of Commissioner Taylor and the subsequent documentation most persuasive.

In sum, the totality of the evidence reveals a judicial officer bent on retaliation against the governing authorities of the County in which she served and determined to have her way irrespective of the disrespect and disgrace her actions were certain to and did, in fact, bring the judicial office which she held.

Perhaps no better evidence of this all-powerful, all-knowing and vindictive attitude can be found than Respondent's own words. In letters written to the Chairman of the County Commission on August 23 and August 25, 1993, she said:

> ... I will not tolerate or allow myself with respect to my duties and responsibilities to be frustrated, impeded or inconvenienced by subordinate county personnel .... This pattern of conduct must cease immediately .... [Ex. 61, 67].

Most telling, however, are the responses given by Respondent to a series of questions from members of this Commission at the close of her testimony [FHT 410-441][13], and her response to a question posed by Judge Lawson:

> Q. Looking back over the history of your tenure as magistrate of Peach County, all that has been said here about disputes that you had with the sheriff, County Commissioners, the coroner, whomever else you may have disputed with, today at this point before the Commission, do you see anything you would have done differently now in reflecting?
>
> A. That I would have done anything differently?
>
> Q. Yes, Ma'am. In your judgment today, were all of your actions justified? Do you think you acted properly? I don't mean legally, I am talking about as a matter of judgment, in your judgment today, do you feel that ... the way you handled all these problems was the right way to do it, do you feel that way today?
>
> A. Yes, sir. [FHT 392, 393].

C.

FINDINGS

Using the Notice of Formal Proceedings as an outline [R. 49-53], and after considering all the evidence and

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[13] For the sake of brevity, this testimony is not quoted, but this Court is respectfully urged to give particular attention to the cited portion of the transcript.

arguments of counsel, this Commission makes and enters the following Findings:

1.

Charge I and each and every subparagraph thereof has been proved by clear and convincing evidence. [R. 50-52].

2.

Although the charge delineated in Charge II has been proven by clean and convincing evidence, Respondent's conduct in this instance was arguably within the duties of a magistrate to assist persons desiring to file a claim and standing alone is insufficient to warrant disciplinary action. [R. 52].

3.

Charges III, IV and V have been proven by clean and convincing evidence. [R. 52-53].

4.

With respect to Charge VI [R. 53], the conduct proven constitutes a clear violation of the Code of Judicial Conduct and the following Canons in particular:

(A) Canon 1 provides:

> ... Judges shall participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe such standards of conduct so that

> the integrity and independence of the judiciary may be preserved.

This Canon is a universal exhortation to every judge to conduct himself or herself in such a manner as to maintain and preserve the integrity of the Court on which such judge sits.

This Respondent failed in this responsibility.

(B) Canon 2A provides:

> Judges shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(C) Canon 2B provides:

> Judges shall not allow their family, social, political or other relationships to influence their judicial conduct ... (and) shall not lend the prestige of judicial office to advance the private interest of the judge .... (Emphasis added).

A judge misuses judicial power when he or she enters an order based not on the merits but in retaliation against someone. In Re Lowrey (Texas Special Court of Review, June 12, 1991).

This Respondent failed in these responsibilities.

D. Canon 3B(4) provides:

> Judges shall be patient, dignified and courteous to ... others with whom they deal in their official capacity.

This respondent failed in these responsibilities.

E. Canon 3B(7) provides:

> Judges shall not initiate or consider ex parte communications, or consider other communications made to them outside the presence of the parties concerning a pending or impending proceeding, except that ....

This Respondent failed in these responsibilities.

F. Canon 3E(1) provides:

> Judges shall disqualify ... in any proceeding in which their impartiality might reasonably be questioned, including instances where
>
> > (a) the judge has a personal bias or prejudice against ... a party; ...
> >
> > (c)(i) is a party to the proceeding; or (c)(ii) is acting as a lawyer in the proceeding.

This Respondent failed in these responsibilities.

5.

The conduct here proven, as well as applicable authorities, demands sanctions of the most severe nature.

D.

RECOMMENDATIONS

Commission Rule 14, as promulgated by this Court, authorizes sanctions ranging from a private reprimand to removal from office. This Commission views its responsibility in this regard as perhaps its most serious function and would never recommend the extreme sanction of removal from office except in a case where the evidence is both clear and convincing. As noted by the Supreme Court of Florida in In re Kelly, 238 So 2nd 565, 569 (Fla. 1970), Cert. Denied, 401 U.S. 692 (1971), the object of these disciplinary proceedings is not to inflict punishment, but to determine whether one who exercises judicial power is unfit to hold a judgeship.

Measured by this standard, it is the unanimous opinion of this Commission that the cumulative effect of Respondent's demonstrated lack of understanding of the role of the judiciary; her obvious lack of judicial temperament; and her intentional misuse of judicial powers to advance her own private interests render he unfit to hold a judgeship.

As so aptly noted by the Florida Supreme Court in In re Graham, 620 So. 2d 1273, 1277 (Fla. 1993), "a judgeship is a position of trust, not a fiefdom." Based upon Respondent's appearances before this Commission and her obvious lack of understanding of the serious offenses involved in this proceeding, this Respondent is not likely to ever understand the difference. Accordingly, she is unfit to hold judicial office and should be removed.

Additional language from the Graham decision is persuasive and controlling:

> A judge who refuses to recognize his own transgressions does not deserve the authority or command the respect necessary to judge the transgressions of others. We are troubled by the fact that [the judge] shows no remorse and we can only presume that if this Court reprimanded him, he would continue to violate the precepts of the Code of Judicial Conduct. See: In re Trettis, 577 So. 2d 1312 (Fla. 1991) (When a Judge continuously acts in a manner that undermines public confidence, removal may be required.)

Id at 1276.

CONCLUSION

> Standing alone, each individual charge against [the judge] might not warrant the extreme disciplinary measure of removal. conduct unbecoming a member of the judiciary may be proved by evidence of specific major incidents which indicate such conduct, or it may also be proved by evidence of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary. Graham at 1275, quoting In Re Kelly, supra.

In the instant case, Respondent's proven conduct was motivated by personal bias and animosity; was willful, deliberate and intentional; and can only be described as a

flagrant abuse and/or misuse of the power and prestige of judicial office to intimidate and coerce other duly elected constitutional officers to comply with Respondent's every whim, wish and desire.

Such conduct cannot be condoned and the totality of the circumstances brings the judicial office into disrepute. Accordingly, this Commission recommends the extreme sanction of removal from office.

This 9th day of December, 1994.

JUDICIAL QUALIFICATIONS COMMISSION
/s/
John E. James, Chair
/s/
Jerry B. Blackstock
/s/
Dr. Barbara Carter
/s/
Charles A. Harris
/s/
Judge Hugh Lawson
/s/
Bob Reinhardt
/s/
Judge Robert B. Struble
/s/
(Sitting by Designation)

SUPREME COURT OF GEORGIA

Case No. S95A0967 Atlanta, March 30, 1995

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

INQUIRY CONCERNING A JUDGE #94-70

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Hunt, C.J., not participating, and Benham, P.J., dissents.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/
Sherie M. Welch, Clerk

IN THE SUPREME COURT
STATE OF GEORGIA

IN RE INQUIRY CONCERNING A JUDGE #94-70
JUDGE LINDA O'NEAL

MOTION FOR RECONSIDERATION OF JUDGMENT

Comes now, the movant, Linda O'Neal, Chief Magistrate Judge of Peach County, Georgia, by and through her attorney, Bruce S. Harvey, and files this motion pursuant to Supreme Court Rule 47 and requests this Court to reconsider its Judgment, which ordered that Judge Linda O'Neal be removed from office, and files said motion on the following grounds:

1. O'Neal did not issue orders to officials of another branch of government when she issued orders to her constables, the sheriff and his deputies, because constables are part of the judicial branch and subject to the authority of a magistrate judge.

2. O'Neal did not obtain felony warrants for the entire board of commissioners based upon "a clearly unenforceable threat," as proven by the fact that the board has carried out the threat and reduced her salary.

3. O'Neal was never charged with intimidating and coercing the sheriff and his deputies, and a finding by the JQC that such occurred absent an opportunity to present a

defense against said charge, violates O'Neal's due process rights.

4. Canons 2A, 3B(2), 3C(2), and 3E(1) required or authorized the actions taken by O'Neal.

5. There is no "clear and convincing" evidence supported by the record which shows that the administration of justice was, in fact, prejudiced or that the public's confidence was undermined as to the impartial functioning of judicial officers as a result of O'Neal's public statement.

6. O'Neal's First Amendment rights shields her from disciplinary sanctions for making a public statement.

7. The decision to remove O'Neal from office which is partially based on her refusal to acknowledge that any specific action was improper or her refusal to accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County, is contrary to prior decisions of this Court and other courts, and violates the Fifth Amendment to the U. S. Constitution as applicable to the states through the Fourteenth Amendment.

8. The will of the people in electing O'Neal and their right to recall should not be abrogated without "clear and convincing evidence" that she "intentionally committed serious and grievous wrongs of a clearly unredeeming nature."

9. It is fundamentally unfair to punish O'Neal by removal from office in light of the facts of record, as they provide sufficient reason to seriously question the due

process accorded O'Neal at the JQC hearing and the adequacy of the resulting evidentiary record.

10. O'Neal's due process rights as guaranteed by the Fifth Amendment to the U.S. Constitution as applicable to the states through the Fourteenth Amendment were violated by the procedures accorded her by the JQC.

11. O'Neal's counsel was deprived adequate time in which to prepare a defense in violation of her due process rights.

12. There is a clearly noticeable and substantial disparity, in relation to the alleged misconduct, between the Supreme Court decisions in other cases and this Court's decision in regard to O'Neal; and the record does not support that O'Neal committed any misconduct of a nature or degree as reflected in these other cases in which the judge was removed from office.

13. The decision to remove O'Neal from office is an unusually harsh judgment when compared to the punishment rendered in other Supreme Court JQC case decisions involving more serious allegations of misconduct.

14. O'Neal, as the record demonstrates, has not engaged in a pattern of improper activity.

15. There is no "clear and convincing" evidence as shown by the record of any harmful effects occurring as a result of the alleged misconduct.

16. O'Neal, as demonstrated by the record and the brief in support of this motion, had a rational legal basis and a justifiable belief for the actions she has taken while in office.

17. As shown by the record, the petition filed in this Court, and the brief in support of this motion, O'Neal has not committed any serious transgressions which would warrant removal from office.

WHEREFORE, movant moves the Court for an order setting aside said judgment.

This the 27th day of March, 1995.

Respectfully submitted,

/s/
Pete C. Whitlock
Georgia Bar No. 756235
Attorney for Movant

Bruce S. Harvey
Georgia Bar No. 335175
Attorney For Movant

37IN THE SUPREME COURT
STATE OF GEORGIA

IN RE INQUIRY CONCERNING A JUDGE #94-70
JUDGE LINDA O'NEAL

BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION

Judge Linda O'Neal respectfully requests this Court in light of the following presented facts and arguments to reconsider its Order that she be removed from office. As Justice Benham so aptly pointed out in his dissent, "the drastic action of removing a judge from office is one that should be taken with great caution and concern." "Judges should not be subjected to the extreme discipline of removal except in instances where it is free from doubt that they intentionally committed serious and grievous wrongs of a clearly unredeeming nature." In re La Motte, 341 So. 2d 513, 517-18 (Fla. 1977). As will be shown O'Neal never engaged in conduct that would warrant the extreme discipline of removal from office. This Court, in its opinion, stated that it would examine the allegations of misconduct with the following principles in mind:

> "Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there

> is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system."

Georgia Code of Judicial Conduct, Preamble (1994).

These same principles will also be considered in the arguments to be presented. It is further stated in the Preamble of the Code of Judicial Conduct that

> "The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law, as well as in the context of all relevant circumstances." (Emphasis added).

These principles will likewise be included in the arguments presented.

1. The Court's opinion with respect to O'Neal's orders of September 13, 1994, directed to the sheriff and his lawful deputies now provides the guidance that heretofore was lacking in Georgia's case law. While the cases as cited by the Court indicate mandamus is the remedy to be used to require an official to properly perform his statutory duties, other cases fairly indicate that a court "is vested with the inherent power necessary to the administration of justice and 'with all necessary authority to efficiently and completely discharge those duties'." Fathers Are Parents Too, Inc. v. Hunstein, 202 Ga. App. 716 (415 SE2d 322) (1991), quoting Wallace v. Wallace, 225 Ga. 102, 111 (166 SE2d 718) (1969). This Court has also stated that inherent power "includes the authority to perform any function reasonably necessary to effectuate [the Court's] jurisdiction" and "improve the administration of justice." In The Matter of Teresa S. Oliver, 261 Ga. 850 (413 SE2d 435) (1992), quoting Wallace, supra.

Further, in McCorkle v. Judges of Superior Court, 260 Ga. 315, 316 (392 SE2d 707) (1992) this passage appears:

> In Grimsley v. Twiggs County, 249 Ga. 632, (1982), we acknowledged that the judiciary, as an independent and co-equal branch of government, must possess power that is concomitant with its duty to the public. See also Miree v. United States, 242 Ga. 126, 132 (249 SE2d 573) (1978) ("Our powers are equal to our duties.").

Additionally, when this Court referred to McCorkle, supra, it noted the following statement in that decision, "inherent power is not a sword but a shield." Also, in McCorkle this Court stated, "... [I]nherent power does not give the judicial branch the right to invade the province of another branch of government. As a principle flowing from the separation of powers doctrine, it arms the judicial branch with authority to prevent another branch from invading its province." McCorkle at 316. This language brings up a very interesting legal twist to the situation that O'Neal faced. To O'Neal and the Magistrate Court, the sheriff and his deputies were constables, as noted by O.C.G.A. 15-10-3(b)(3)(c) ("In the case of a ... sheriff or sheriff's deputy serving as constable"); O.C.G.A. 15-10-27(c) (In any county subject to this code section ... the sheriff and deputies of civil court shall serve as constables of magistrate court.); and O.C.G.A. 15-10-100(b) ("If no provision is made for the appointment of constables, the sheriff and his deputies shall perform the duties of constables."). Constables are created within the law governing Magistrate Courts and are officers within the judicial branch, and are not officers within the executive branch to which the sheriff and his deputies otherwise

belong. O.C.G.A. 15-10-100(a) provides that, ... "the county governing authority may provide for the appointment of constables by the chief magistrate. Constables so appointed shall serve at the pleasure of the chief magistrate...." With regard to their power of arrest the law states: "Constables shall exercise the power of arrest only with a warrant or at the direction of and in the presence of a magistrate or the judge of another court." O.C.G.A. 15-10-103. Clearly, constables are officers of the magistrate court subject to the direction and control of a judge. Even the language which sets forth their powers and duties suggest that they are subject to the direction and control of the judge of the magistrate court. O.C.G.A. 15-10-102. Thus, there is a rational basis for O'Neal to have believed that when she issued orders to the sheriff and his deputies that she was not invading another branch of government but was issuing orders to court officers within the judicial branch of government and, therefore, was not exceeding the principles with respect to inherent power as set fort in Grimsley v. Twiggs County, 249 Ga. 632 (1982) and McCorkle, supra. See O'Neal's testimony at [FHT p. 332:14]. Accordingly, pursuant to this analysis O'Neal could not be guilty of using the Court's inherent power in a power struggle between the branches, because the sheriff and his deputies by operation of law wears two (2) hats: one within the executive and one within the judiciary branch of government. Notably, O'Neal's orders to the sheriff and his deputies only included the duties that they were to perform while they were functioning within the judicial branch as constables. If this argument is considered to be valid then Canon 3C(2) of the Code of Judicial Conduct also applies, which states that

> "Judges shall require* their staffs, court officials and others subject to their direction

> and control to observe the standards of fidelity and diligence that apply to the judges and to refrain from manifesting bias or prejudice in the performance of their official duties." (Emphasis added).

O'Neal's orders issued to the Magistrate Court's constables, the sheriff and his deputies, who are "court officials" or "others subject to [her] direction and control" simply required diligence in the performance of their constable duties and thus would be within her authority to issue as mandated by the Code of Judicial Conduct. Canon 3C(2).

It is quite understandable how a new judge in office, as in O'Neal's case, could interpret the case law, statutes, and Code of Judicial Conduct referenced above, coupled with Art.. VI, Sec. I, Par. III of the Georgia Constitution of 1983 and O.C.G.A. 15-1-3(4) to mean that orders such as she issued to her constables, the sheriff and his deputies, were within her authority to issue.

There is no evidence in the record that she issued any orders before or after this event which exceeded her authority, so in this regard the record demonstrates no pattern of improper activity. In fact, the record demonstrates that since issuing the orders to the sheriff and his deputies, O'Neal has used the writ of mandamus to require the proper performance by an official of a statutorily imposed duty. See JQC hearing Exhibit 168, dated September 26, 1994. Interestingly, although six months have elapsed, no trial date has been scheduled to hear that case. Deese testified that he never served any of the orders [FHT p. 194, 204], and the evidence in the record indicates no change with respect to the sheriff and his deputies performance of their duties, so based on the record the orders actually had no effect on the sheriff

and his deputies. O'Neal submits that the seriousness of the transgression, being one of mistaking the status of the law, and given the context of all relevant circumstances, is minor. Besides, judges make mistakes as to the status of the law from time to time, but they are not charged with willful misconduct and removed from office because of the mistake.

This Court found that O'Neal should have disqualified herself at Deese's rule nisi hearing. However, O'Neal respectfully requests this Court to consider her reliance upon the commentary to Canon 3E(1), which states in part:

> "The Rule of necessity may override the rule of disqualification. For example, a judge might be ... the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order..."

At the time the hearing was held, O'Neal was the only Magistrate Judge in Peach County to hear the matter. She perceived that the improper performance of constable duties by the sheriff and his deputies was of such a poor degree that immediate attention to the matter was necessary. See [FHT p.330-332, 424]. Therefore, when Deese refused to serve or order another deputy to serve the four (4) orders outlining the constable duties she considered it necessary to take immediate judicial action. As explained in her petition to this Court, she used the rule nisi hearing as a vehicle to give Deese a direct order to serve the four (4) orders. If O'Neal misunderstood the Canon and its commentary in regard to this matter, the sanction for such misunderstanding would appear to be something far less than removal from office.

The record evidences no other instances before or after this one occurrence when it is alleged that O'Neal failed to disqualify herself and circumstances required disqualification. Therefore, there is no pattern of improper activity with regard to this matter. Based on the record there has been no effect on Deese because of O'Neal's failure to disqualify herself. O'Neal respectfully suggests that since Deese was purged of contempt the seriousness of the transgression is minor.

This Court noted the JQC factual finding that O'Neal issued the orders to the sheriff and his deputies, and held the rule nisi hearing on Deese to intimidate and coerce the sheriff and his deputies. O'Neal was never charged with intimidation and coercing or attempting to intimidate and coerce the sheriff and his deputies and thus she was never given an opportunity to defend against that specific accusation, in violation of her due process rights as guaranteed by the Fifth Amendment to the U. S. Constitution as applicable to the states through the Fourteenth Amendment. She respectfully submits to this Court that it is now unfair to use such a finding to determine that she committed willful misconduct in office and thereby violated Canons 2A, 2B, and 3E(1). Notwithstanding this argument, the record contradicts the JQC finding and instead shows that the sheriff and his deputies were not intimidated by the orders and Deese's Rule Nisi Hearing. Deese testified at the JQC hearing that he told the JQC investigator that he thought the problems with the Magistrate Court were minor in nature. [FHT p. 205]. Deese admitted under oath at the JQC hearing, a year after they were issued, that none of the orders had been served [FHT p. 194, 204]; and the documentary exhibits of O'Neal's correspondence and her testimony shows that the

sheriff and his deputies still do not properly perform their duties with respect to the Court.

2. O'Neal did not obtain felony warrants for the entire board of commissioners based upon "a clearly unenforceable threat," as proven by the fact that the board has carried out the threat and reduced her salary. She received a salary increase for the month of November, 1994, which included a supplemental pay increase of $50.46. Her paycheck for the month of December, 1994, disclosed a supplemental pay decrease of $50.46, and such decrease has continued monthly thereafter. O'Neal's affidavit and pay stubs in support of these facts is attached hereto as **Exhibit "A"**. Georgia Law prohibits the reduction of a magistrate's compensation or supplement during any term of office. O.C.G.A. 15-10-23(b). The board decreased O'Neal's salary after the JQC hearing had occurred, the closing arguments had been submitted, and the hearing record was established.

Additionally, O'Neal obtained the felony warrants in reliance upon the mandate of Canon 3B(2) ("Judges shall be faithful to the law" and "shall not be swayed by partisan interests, public clamor, or fear of criticism."). She obtained the warrants on a good faith belief that a crime had been committed, as the record supports. She believed that her personal integrity, oath of office, and respect for the law required her to seek criminal prosecution and that ignoring the commissioners' threat would violate Canon 2A ("Judges shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."). At the time the threat was communicated to O'Neal the record reflects that she was not embroiled in a political squabble with the

commissioners, and that a proper relationship still existed between them.

O'Neal's public statement following the dismissal of the felony warrants was a good faith informative factual statement, as supported by the record. Furthermore, there is not one scintilla of evidence in the record that shows that the administration of justice was, in fact, prejudiced or that the public's confidence was undermined as to the impartial functioning of judicial officers as a result of O'Neal's statement. O'Neal asserts that absent clear and convincing evidence that such harm occurred that her freedom of speech rights as guaranteed by the First Amendment to the U. S. Constitution shields her from disciplinary sanctions for making the public statement. She respectfully further asserts that the right of the public to be informed as to the truthful reasons for her official actions is absolute and must be observed by her because she holds a position of public trust: Thus, her breach of this public trust would violate Canon 2A.

3. The record demonstrates that O'Neal sincerely and genuinely believed her conduct to be correct under all the relevant circumstances. Her refusal to acknowledge any improper action or to not accept personal responsibility for the difficulties she experienced with the other elected Peach County officials is not shown by clear and convincing evidence in the record to be a refusal made in bad faith.

The Supreme Court of Florida has recently expressed the following opinion concerning judges who refuse to admit wrongdoing or refuse to express remorse: "Every judge who believes himself or herself truly innocent of misconduct has a right -- indeed, an obligation -- to express that innocence to

the Commission ..." Inquiry Concerning A Judge No. 93-62, RE: P. Kevin Davey, Supreme Court of Florida (1994).

This Court has also previously made and adopted a statement with respect to denial of guilt and remorsefulness, which in part states:

> Can it be said that one who denies guilt and, therefore, is not remorseful for his wrongdoing has been rehabilitated? The question is best analyzed and answered by the logic of In the Matter of Hiss, Mass. 333 NE2d 429, 437 (1975). 'Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should not be required to confess guilt to a criminal act he honestly believes he did not commit. For him, a rule requiring admission of guilt and repentance create a cruel quandary: he may stand mute and lose his opportunity; or he may cast aside his hard retained scruples and, paradoxically, commit what he regards as perjury to prove his worthiness to practice law. Men who are honest would prefer to relinquish the opportunity conditioned by this rule ....'

In The Matter Of Mitchell, 249 Ga. 280 (290 SE2d 426) (1982).

Moreover, it is respectfully submitted that the decision to remove O'Neal from office which is partially based on her refusal to acknowledge that any specific action was improper or her refusal to accept personal responsibility for the difficulties she experienced with the other elected officials of Peach County, violates the Fifth Amendment to the U. S. Constitution as applicable to the states through the Fourteenth Amendment.

4. One of the most basic organic rights of the citizens of Peach County was expressed when they unseated a sixteen year incumbent and replaced him with Linda O'Neal. O'Neal respectfully asserts that it is the voters of Peach County who ought to decide her fate in office, just as they recently did with respect to Commissioner Jack Taylor who was a witness and testified at the JQC hearing against O'Neal. Taylor was defeated in all four precincts and on the absentee ballots reportedly by a substantial 168 votes out of a total of 870 votes in a special election held on February 7, 1995. One of the principal issues in that election was the complaint that he participated in and filed against O'Neal with the JQC. Moreover, O'Neal as an elected official is subject to recall by the voters of Peach County. Her removal from office will result in an interim appointed magistrate to fill the office vacancy and that magistrate will not be subject to recall. Therefore, the will of the people in electing O'Neal and their right to recall should not be abrogated without "clear and convincing evidence" that she "intentionally committed serious and grievous wrongs of a clearly unredeeming nature." In re La Motte, supra. The record simply does not support such a finding.

5. At the JQC hearing O'Neal attempted to introduce into evidence indication of positive community support for her as Chief Magistrate Judge of Peach County. Over eighty (80) individuals either wrote letters, signed petitions, or completed favorable court questionnaires, which serve to significantly counter and offset the apparently solicited fifteen complaints filed against O'Neal. Copies of this evidence is attached hereto as **Exhibit "B"**. The JQC refused to allow admission of this evidence on the basis that it had not been presented at the pretrial conference. [FHT p. 386-387]. However, counsel with less than 24 hours notice that he would be responsible for appearing for O'Neal at the pretrial conference on September 27, 1994, was not aware of the above evidence. The quantum of evidence in the case (hundreds of pages of documents and over 450 deposition transcript pages) made it impossible for him to become adequately familiar with all of the evidence in such a short period of time. Counsel advised the JQC on September 29, 1994, at the beginning of the hearing that his short exposure with the case caused him to believe that he would not be able to adequately represent O'Neal. [FHT p. 11-17]. Nonetheless, counsel's request for a continuance was denied and O'Neal was forced to proceed. The JQC offered to continue the hearing if O'Neal would take a leave of absence from her office during the continuance. Such a coercive offer was not acceptable to O'Neal and she declined the offer. Additionally, O'Neal's motion for directed verdict presented at the close of the commission's case in chief was denied by the presiding hearing officer without presenting it before the entire commission in violation of Rule 1(b) of the Rules of the Judicial Qualifications Commission. [FHT p. 289, 296]. Such ruling was a ruling on the merits of the case and by the commission's rules a majority of its membership was required. Accordingly substantive error resulted and denied

O'Neal due process. It is fundamentally unfair to punish O'Neal by removal from office in light of these facts, as they provide sufficient reason to seriously question the due process accorded O'Neal at the JQC hearing and the adequacy of the resulting evidentiary record.

6. In O'Neal's petition objecting to the JQC's Findings and Recommendations and in this brief several issues have been raised that put into question the adequacy of the JQC procedures accorded O'Neal in regard to her Fifth Amendment due process rights as applicable to the state through the Fourteenth Amendment. As this case demonstrates there are gross violations of fundamental notions of due process, which occur as a consequence of the JQC being investigator, prosecutor, and trier of fact of judicial complaints. In support of this contention O'Neal turns to recent developments in the State of Florida. Florida has recently decided that their JQC process, which is similar to Georgia's, is lacking in the area of due process as required by the U. S. Constitution. The Florida Bar Board of Governors, including members of the combined Bench/Bar Commission, have voted unanimously (28 to 0) to bifurcate the JQC. Copies of articles in the Florida Bar News which address this subject is attached hereto as **Exhibit "C"**.

7. A survey of twenty five (25) past JQC cases that reached the Supreme Court was undertaken to compare the Supreme Court decision in each of those cases to the decision this Court has made with respect to O'Neal. A copy of the survey is attached hereto as **Exhibit "D"**. There is a clearly noticeable and substantial disparity, in relation to the alleged misconduct, between the Supreme Court decisions in the other twenty five (25) cases and this Court's decision in regard to O'Neal. The record does not support that O'Neal

committed any misconduct of a nature or degree as reflected in these other cases in which the judge was removed from office. Indeed, the record does not even support that O'Neal committed any misconduct as serious as that reflected in most of the other cases in which the judge was suspended, and in some cases only reprimanded.

8. To further demonstrate the abusive political powers to which O'Neal has been subjected, it should be noted that immediately following the issuance of this Court's decision, the Judges of the Superior Court of the Macon Judicial Circuit issued an ex-parte order authorizing the Board of Commissioners to take possession of all court papers and county property currently located in the office of the Magistrate Court. A copy of said order is attached hereto as **Exhibit "E"**. A strikingly noticeable aspect of the order is that the board of commissioners, a separate branch of government, was being authorized to take possession of judicial property. Additionally, Charles Bartlett, the commission chairman advised William Cooney, deputy court clerk, on Monday, March 20, 1995, that he was being placed on leave and that he had to leave the courthouse. A copy of a letter which was given to Cooney at the time he was placed on leave is attached hereto as **Exhibit "F"**. Further, the county marshal threatened Cooney that if he did not leave the courthouse that he would be arrested for failure to obey a lawful order.

As shown by the record, the petition filed in this Court, and this brief, O'Neal had a rational legal basis and a justifiable belief for the actions she has taken while in office.

Based on the foregoing presented facts and arguments, and in light of the lessor disciplinary action taken in the majority of the other cases shown in **Exhibit "D"**, It is respectfully requested that this Court reconsider its decision to remove Judge Linda O'Neal from office.

This the 27th day of March, 1995.

Respectfully submitted,

/s/
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53IN THE SUPREME COURT
STATE OF GEORGIA

IN RE INQUIRY CONCERNING A JUDGE #94-70
JUDGE LINDA O'NEAL

PETITION AND SUPPORTING BRIEF IN OBJECTION
TO
FINDINGS AND RECOMMENDATIONS OF
THE JUDICIAL QUALIFICATIONS COMMISSION

Comes now, the Petitioner, Linda O'Neal, Chief Magistrate Judge of Peach County, Georgia, by and through her attorney, Bruce S. Harvey, and petitions the court to overrule the FINDINGS AND RECOMMENDATIONS of the Judicial Qualifications Commission which has recommended to this court that Petitioner be removed from office, and to dismiss all charges filed against her by said commission, and in support of her petition Petitioner respectfully shows the court the following:

BRIEF IN SUPPORT OF PETITION

I
STATEMENT OF THE CASE

A. Nature Of The Case

This matter - involving disciplinary action to remove Petitioner from her elected judicial office - is a case of gross mischaracterization and misstatement of the facts and is a reckless misrepresentation of truth. Indeed, one of the most

alarming and troubling aspects of the FINDINGS AND RECOMMENDATIONS of the Commission, as the evidence clearly shows, is the gross failure to report a straightforward accounting of the facts as they actually occurred.

Accordingly, the motivations behind this matter are seriously questioned by Petitioner. Careful analytical scrutiny of the evidence will reveal that the verbs, adverbs, and adjectives selected by the author of the Commission's report are so venomous and so grossly overstate Petitioner's conduct that the impartiality of the proceedings must be questioned. Due process calls for a thorough review of the record by this court.

Reportedly, this matter arose upon the receipt by the Commission of a total of fifteen complaints submitted by citizens of Peach County, after news stories publicized that all five County Commissioners were arrested on a felony warrant requested by Petitioner. Subsequent to his arrest, Charles Bartlett, Chairman of the Peach County Board of Commissioners, filed a complaint with the Commission against Petitioner.

B. Course Of Proceedings

Petitioner was first notified of this matter by letter dated January 10, 1994. The Judicial Qualifications Commission instructed her to meet with the Commission on Friday, January 28, 1994.

Petitioner met with the Commission as directed; denied the allegations made against her, both orally and in writing; and stated unequivocally that she had at all times adhered to the highest standards of judicial conduct. [R.44-45].

Following this conference and by letter dated January 31, 1994, Petitioner received notice that the Commission had voted to investigate the complaints filed against her.

Petitioner sent a letter to the Commission, dated February 11, 1994, wherein she adopted and incorporated by reference her letter of January 28, 1994, and again denied any willful misconduct in office or any conduct prejudicial to the administration of justice which might bring the judicial office into disrepute. [R.48].

A Notice of Formal Proceedings was subsequently received by Petitioner, dated March 31, 1994. [R.49-53].

On or about May 4, 1994, Petitioner's Answer to the Notice of Formal Proceedings generally denied all allegations and contained numerous special defenses. [R. 55-65].

A pre-hearing conference was scheduled for September 27, 1994, by Judge Hugh Lawson, the Judicial Commission member designated by the Chair to preside in this matter.

Immediately prior to the scheduled pre-trial conference, Petitioner filed in this Court an emergency motion for a continuance of the scheduled pre-trial conference, as well as the Formal Hearing then scheduled to begin on September 29, 1994. [R. 82-87]. This Motion was opposed by the Commission [R. 88-117], and by order dated September 26, 1994, such Motion was denied without opinion. [R.118].

The matter was subsequently heard by the full Commission on September 29, 1994 and September 30, 1994.

At the outset of the Formal Hearing, Petitioner's Motion to Recuse [R. 119-123] and her oral motion for continuance were denied. [FHT 1-18].

At the conclusion of the Formal hearing, counsel were directed to submit written arguments.

C. Disposition Below

On December 9, 1994, the Commission issued its FINDINGS AND RECOMMENDATIONS and recommended that Petitioner be removed from office.

II
STATEMENT OF FACTS

A. General Statement

From the day before Petitioner took office, when the lame-duck Board of Peach County Commissioners, as punishment, reduced her salary to the statutory minimum of $13,125 per year [FHT p. 129], until the day the newly configured Board of Peach County Commissioners, in violation of both the civil and criminal laws of this State, threatened to rescind the salary increase they had previously granted to her, Petitioner has admirably withstood the onslaught of an inept, lethargic, inefficient and sometime punitive Board of Commissioners in complete control of the power of the purse. Petitioner, unlike probably any other Magistrate in the State of Georgia, has found herself - a duly elected judge by the constituents of Peach County - held economic hostage to the purse strings of the Board of Commissioners; yet bound by the stringent requirements of the Cannons of Judicial Conduct, a Code of Judicial Conduct which she holds in high esteem, interprets literally, and has faithfully followed.

Petitioner was asked by citizens of Peach County to run for office amid allegations of corruption and mismanagement. Once deciding to run for office, Petitioner ran her political campaign on a political platform against government corruption and in favor of change. Petitioner, in

a contested election, unseated a 16-year incumbent, George Harris, who himself had been brought before the Judicial Qualification's Commission amid allegations of fiscal corruption in the Magistrate Court. From her first day in office, Petitioner has found herself in the unenviable position of repeatedly requesting even the most fundamental of supplies to efficiently discharge her administrative responsibilities, including but not limited to, obtaining the return of items looted from the Magistrate Court during the waning days of the prior administration; obtaining the alarm code which would enable her to get into her office on weekends to fulfill her constitutional duties with respect to the presentment of prisoners; obtaining staff support sufficient to conduct the business of the Magistrate Court; obtaining working chairs in which visitors to the Magistrate Court can sit; obtaining pens and pencils, paper, and paper clips; curtains for curtain rods; and obtaining a working air conditioner. As if it were not enough that a sitting judge would have to repeatedly request such information and/or supplies from the powers that controlled the purse, but often these items were never provided to her or were provided months after they were requested. For example, Petitioner, sought return of the items taken from her office by the prior administration in letters dated January 4, 1993, April 19, 1993, May 17, 1993, May 31, 1993, June 2, 1993, and June 14, 1993. [See respectively Ex. 1, 2, 15, 19, 22, 23, 25, 29]. Petitioner sought a break down of the Magistrate Court budget in letters dated May 3, 1993, May 24, 1993, June 14, 1993, July 12, 1993, July 28, 1993, August 23, 1993, and November 8, 1993. [See respectively Ex. 16, 17, 20, 30, 40, 53, 61 and 97]. Petitioner has repeatedly expressed her concern over courthouse security in letters dated June 14, 1993, July 6, 1993, July 24, 1993, and August 23, 1993. [See respectively Ex. 31 (page 2), 39, 50, 59, and 62]. Does harm

to a magistrate or employee have to occur before such money is allocated? Petitioner has repeatedly told members of the County Commission that she needs more employees or larger salaries for her present staff because the prior administration had six (6) employees and she has three (3) performing a larger workload in letters dated June 14, 1993, July 12, 1993, September 3, 1993, November 8, 1993, November 8, 1993, November 12, 1993 (two letters), November 22, 1993, and June 6, 1994. [See Ex. 33, 43, 69, 98, 99, 100, 102, 105, and 131]. Should the County Commissioners be allowed to prevent the Magistrate Court from functioning by refusing to adequately staff the Court? Petitioner has gone so far as to use her own personal computers and personal money to purchase security and necessary supplies precisely because the Commissioners have refused to issue purchase orders for these items. [FHT p. 313; Ex. 3 (page 6), 38, and 60].

B. As Stated The Evidence in Support of the Findings Misrepresents the Truth

As outlined by the Notice of Formal Proceedings the allegations as stated in support of the charges and the evidence used to support the Commission's subsequent findings grossly mischaraterizes and misstates the facts as evidenced by the record. Petitioner's untangling of the allegations and twisted facts will reveal a professionally dutiful, fair, honest, and ethical judge, who is most worthy of the judicial office to which she was elected.

The voluminous record of 168 exhibits assembled by the Commission has been reduced into three (3) easy to review and informative table summaries by Petitioner, and are attached to this Petition and Supporting Brief as Appendices A (Summary of Plaintiff's Exhibits), B (Summary of Plaintiff's Exhibits - Petitioner's

Correspondence With Board of Commissioners), and C (Summary of Plaintiff's Exhibits - Petitioner's Correspondence With Sheriff). These appendices accurately summarize Plaintiff's exhibits by their hearing record exhibit number and provide a quick reference to this otherwise lengthy and burdensome part of the record. Reference to an appendix summary will hereinafter be cited as [Appendix __ (appropriate letter designation)].

(1.) Magistrate Court: The Lack Of Cooperation From Other County Officials

The Commission's declaration that Petitioner has been at war with almost every other elected official in Peach County has put the proverbial cart before the horse and grossly mischaracterized the facts. There would never have been any difficulties with the Sheriff and County Commissioners if they had met only the minimum "literal requirements of the law". Specific treatment of these matters will be more fully discussed below, but generally speaking, Petitioner has been required again and again to cite for the County Commissioners and Sheriff what are the literal requirements of the law. In spite of such counseling, the members of the County Commission and Sheriff's Department have continued to either ignore the literal requirements of the law or to openly perform acts in violation of them. If Petitioner in her dealing with the Sheriff's Department has brought disrepute on her Court - which she vehemently denies - by requiring that its duly appointed officers comply with the minimum requirements of the law then so be it. Petitioner apparently finds herself between a rock and a hard place in "diligently discharging] [her] administrative responsibilities" under Canon 3(C) and dealing with a system resistant to compliance with either

efficiency of service or the literal requirements of the law. Should she be punished for faithfully and enthusiastically following Canon 3(C)?

(2.) Petitioners Correspondence

The Commission's statement that Petitioner made repeated and almost continuous demands on various county officials substantially mischaracterizes the truth. No doubt Petitioner has written many letters. Petitioner is a product of business where you are taught to put everything in writing to document issues and requests. [FHT p. 305-306; See Appendices A, B, & C]. Petitioner has written letters to the Sheriff, the Board of Commissioners and their Administrative Clerk. Every letter written by Petitioner to the Board of Commissioners involves a subject germane to either the administrative or judicial functioning of the Magistrate Court. All requests for supplies, information, and reimbursement by Petitioner were requests for fundamental items necessary for the basic functioning of the Magistrate Court, and Petitioner has been forced to re-request the same information and/or supplies over and over again. [FHT p. 317-318]. The letters speak for themselves. The letters are not "imperious and demanding in tone" [FHT p. 137], although after requesting the same information sometimes five and six times they should be demanding and imperious. In contrast, see letters from the Commissioners, Exhibits 73, 85 where the snide language of power pours fourth: "Where did you ever get the impression that your salary should be based on that of any other employee of the county" and "We regret that you didn't see fit to attend our meeting today". Finally, see the unsigned, open letter of the Board of Commissioners [Ex. 85 p. 2, 3] read to the news media in a

called meeting of the Board of Commissioners. Also, see Petitioner's measured response in Exhibit 87.

(3.) Petitioner's Orders to Sheriff and his Lawful Deputies

Petitioner is accused of intentionally misusing judicial power in issuing a set of four (4) orders to the sheriff and his lawful deputies. The Commission contends that Petitioner issued identical orders to each and every employee of the sheriff's department, regardless of the position held by such employees, which were beyond the power and authority of a Magistrate to issue, and that there is absolutely no evidence in the record that the sheriff's department had ever refused to serve and/or deliberately delayed the service of any papers issuing from the Magistrate Court. Each and every one of these contentions is erroneous as evidenced by the following review of the record. A review of the four orders [Ex. 71] shows that each order is separate and distinct and reflects one of the four (4) statutory powers and duties of constables, as outlined in O.C.G.A. 15-10-102, which apply to the sheriff and his deputies when the county governing authority has not provided for the appointment of constables, pursuant to O.C.G.A. 15-10-100. Here we have the first of numerous instances of where the facts were misstated by the Commission. On cross-examination Deputy Deese testified that the orders were not identical, that they were separate orders in every file [FHT p. 202]. The orders clearly read that they were issued to only the sheriff and his lawful deputies, and not to any other employee within the sheriff's department.

The reason that fifty six (56) file folders for 56 named employees were sent to the sheriff's department, as explained by Petitioner, was because she did not know which of the

employees were deputies. [FHT p. 330; p. 336, and p. 401] Petitioner's testimony in this regard was corroborated by Chief Deputy Deese's testimony [FHT p. 202-p. 203]. Even though the orders on their face were not issued to any employee, except the sheriff's lawful deputies, and the testimony of both Petitioner and Deputy Deese indicate that Petitioner did not know who were deputies, the Commission would still have this Court believe that Petitioner was attempting to usurp some power over the other employees of the sheriff's department. Once again, the Commission's report is less than candid with the facts.

Each Court may exercise such Constitutional judicial power as necessary in aid of its jurisdiction or to protect or effectuate its judgments. The Constitution of the State of Georgia, Art. VI, Section I, Para. IV. Every Court has statutory authority to control the conduct of its officers, pursuant to the provisions of O.C.G.A. 15-1-3. Accordingly, within reason it does appear that Magistrate Judges do have the power to issue Orders proscribing conduct of its court officers for the proper functioning of their courts. Not only do Magistrate Court judges have the power to issue such Orders but judges are ethically bound under the Code of Judicial Conduct Canon 3(C)(1) and (2) [Formerly 3(b)(1) and (2)], to maintain order and diligently discharge their administrative responsibilities and to require similar conduct of their staff and court officials.

The four (4) Orders specifically address Petitioner's concern over security in her courtroom, the delay in serving warrants and other papers by the Sheriff's Department, and delay in the Sheriff's department in turning over money to the Magistrate Court. [FHT p. 330-35, Ex. 31, 36, 50, 59, 68, 88, 93, 94, 121, 117, 123, 129, 130, 132, 133 (See discussion), 134, 137, and 139]. Many of the exhibits are replete with examples of the continuing failures by the Sheriff's

Department to fulfill its statutory duties which in turn prevented the Magistrate Court from functioning properly. [See Ex. 68, 88, 93, 94, 95, 96, and 133].

An astounding list of factual statements showing that the sheriff and his deputies have failed to perform their duties with respect to the Magistrate Court is set forth in Petitioner's verified complaint filed against the Board of Commissioners of Peach County [Ex. 168 p. 7-11]. Yet, given the enormous amount of facts evidencing the sheriff's department failure to properly provide service to the Magistrate Court, the Commission would have this Court believe that the sheriff was performing his duties and the Petitioner was misusing her judicial power when she responded to such nonfeasance, malfeasance, and misfeasance. After experiencing for over eight months, since her term of office began, the lack of the service required for the proper functioning of the court, Petitioner issued the orders to the sheriff and his lawful deputies. [Ex. 168 p. 10 para. 54]. They were merely a remedial form of notice, outlining the sheriff's and his deputies general statutory duties with regard to the Magistrate Court. Under the circumstances at the time they were issued they were nothing more than a prudent attempt by a dutiful judge to make her court officers aware of their official responsibilities.

(4.) Deese Rule Nisi For Civil Contempt

Petitioner sent the Orders to Deputy Deese at the Sheriff's Department to serve because the Sheriff was on vacation, therefore, Deputy Deese was responsible for performing all the duties of the Sheriff. (FHT 195). Further, Deese was required by law to serve such Orders in the Sheriff's stead. First, Deese told Petitioner that he was serving the Orders, a few days later he advised her that he

had not served any of them. Deputy Deese, as he admitted under oath, lied to Petitioner when he told her that he had served some of the Orders when in fact he had made a conscious decision to refuse to serve the Orders until the Sheriff was back from vacation. [FHT p. 201, 202, 337]. Deputy Deese even makes the admission, under oath, that he felt by telling Petitioner that he was not serving the Orders that he would have been charged with contempt. [FHT p. 201]. There was no deputy sheriff in the county willing to serve the court's Orders on Deese so he was eventually served with a copy of the four (4) orders by Magistrate Court Deputy Clerk, William Cooney, who was appointed a pro tempore special officer, pursuant to O.C.G.A. 15-13-10. [Ex. 82]. Because Deputy Sheriff Terry Deese refused verbally over the telephone to serve the Orders on the other deputies as he was required by law to perform, he was served with a Rule Nisi and ordered to appear at a hearing to determine whether he should be held in Civil Contempt. This event was precipitated by the fact that Petitioner had issued these orders which restated existing Georgia Law precisely because of the failure of the Sheriff's department to perform these duties. Petitioner at the contempt hearing again ordered Deputy Deese to serve the Orders which to this day he has refused to perform. [FHT p. 204]. In spite, of his dishonesty and in spite of his continuing blatant refusal to perform the lawful duties of a Deputy Sheriff, Petitioner "purged" Deputy Deese of any Civil Contempt, after ordering him from the bench to serve the orders on those deputies not present at the hearing, which was attended by most members of the Sheriff's department. Petitioner ruled from the bench. [FHT p. 203, 342-343]. Since most members of the Sheriff's Department voluntarily attended the hearing [FHT p. 194; Ex. 167], and since it was Petitioner's purpose in the first place to only make sure that the Sheriff's deputies were aware of their

official responsibilities with respect to the court, she had each of them give their names, after which she verbally issued the four (4) Orders to them.

When the Commission said, "when said orders were not served promptly enough to satisfy the Respondent, she issued a Rule Nisi to the Chief Deputy Sheriff for civil contempt", it was again misleading this court by mischaracterizing the facts. In fact, it is reasonable to conclude that Petitioner's conduct demonstrates substantial judicial patience and tolerance, especially after her court had suffered eight (8) months from the negative effects of the deficient service by the sheriff's department - deficient service that the sheriff readily admitted under oath. [FHT p.150, 151].

Petitioner has been criticized by the Commission for denying a motion to recuse filed by counsel for the accused; acting as both prosecutor and judge; and for failing to follow the procedures as outlined in Dowdy v. Palmour, 251 Ga. 135, in order to meet due process requirements. First, counsel for the accused failed to present an affidavit in support of his motion to recuse, thus, Petitioner properly denied the motion. [Ex. 167]. Second, it is proper procedure for a judge to singularly hear civil contempt matters, and such is done every day in courts throughout this State. Third, the procedure outlined in the Dowdy case presupposes the possibility of some form of punishment being meted out by the court, and is relative to criminal contempt cases. Deese was never in jeopardy of such punishment, i.e.., admonishment, fine or jail. This was a civil contempt proceeding in which the Rule Nisi was used as a vehicle to bring him before the court, so that the remedial procedure of giving him a direct order from the bench could be accomplished. Petitioner asserts that under such circumstances Dowdy is not applicable. Instead of indicating

a judge who misuses the power of her office, such application of a remedial cure to a long-standing problem, disobedience of its court officers, suggests a judge with a reserved and thoughtful temperament. Furthermore, to deny any court the prudent use of such remedial power would invite civil anarchy by its court officers and disrespect for its judicial authority.

(5.) Poole Rule Nisi For Criminal Contempt

After it became obvious to Petitioner that no deputy was going to serve the sheriff with a copy of the orders, Petitioner called upon the coroner to serve the sheriff. Petitioner gave him an order to serve the Sheriff [FHT p. 338-339, Ex. 81] and a copy of the four orders to serve on the Sheriff. [Ex. 71]. Coroner Poole, much like the County Commissioners, received incorrect legal advise and, acting on that advise, refused to serve the Sheriff with the Orders. Under Georgia Law, O.C.G.A. 45-16-8, the coroner is authorized to serve the sheriff when the sheriff or his deputy refuses to serve a writ or other process. When Petitioner attempted to explain to the Coroner the procedure for serving a sheriff in Georgia, Coroner Poole stormed out of the Magistrate Court refusing to serve anything, saying, "I am not serving anything you say, I don't have to". [FHT p. 338, 339; Ex. 75, 77]. Petitioner, thereafter, issued a Rule Nisi for a criminal contempt hearing with regard to Coroner Poole for his willful disobedience to a lawful order of the court. There was no deputy sheriff in the county willing to serve the court's papers on the coroner so the rule nisi was served on Poole by Brooks Livingston, who was appointed a pro tempore special officer, pursuant to O.C.G.A. 15-13-10. [Ex. 78]. On September 23, 1993, after Deese's rule nisi hearing, Petitioner called the Sheriff and arranged a meeting between

them to discuss the service the Sheriff's department was providing the court. At the meeting which was held that same day, the Sheriff agreed to solve the problems if Petitioner would continue or cancel the Coroner's rule nisi hearing scheduled for September 24, 1993, at 4 p.m. Petitioner, in good faith, issued an indefinite stay with respect to Poole's hearing and instructed her deputy clerk the next morning to call Coroner Poole and advise him of the stay. [FHT p. 341-342]. At that time no attorney had entered an appearance on behalf of the Coroner. [FHT p. 342]. The contempt rule nisi hearing having been indefinitely stayed, Coroner Poole, was not then, nor has he ever been, held in contempt. [FHT p. 342; Ex. 86]. Much of this is in sharp contradiction to the summary of evidence in support of the Commission's FINDINGS. Certainly, these facts do not describe an unreasonable or uncooperative judge who abuses her power, but they do make one wonder about the conduct and motivations of some of the other elected officials in Peach County.

(6.) Events Preceding Intimidation Of Court

Some events that lead up to the subject act of the attempt to intimidate Petitioner, which have not as yet been discussed may, when accurately detailed, shed some additional perspective on the matter. October 1, 1993, was the beginning date for the 1994 budget. For months Petitioner had tried in vain to obtain the necessary information from the Board of Commissioners so that she could make an intelligent and sensible budget presentation to the Board. [Ex. 16, 20, 21, 30, 40, 53, 61, 57, 69]. All requests for information or assistance were totally ignored. [See Exhibit Summary, Appendix B]. On September 15, 1993, Petitioner requested that she be given an annual salary

increase in the next budget. [Ex. 72]. On September 20, 1993, Petitioner's request for a salary increase provoked an unusually quick response by Chairman Bartlett in the form of a notably sarcastic letter. [Ex. 73]. On September 22, 1993, the County Commissioners wrote to Petitioner and asked her to meet with them at a called meeting on September 24, 1993, at 4 p.m., which concerned "the office of Magistrate Judge". [Ex. 83]. Again, the Commission misstates the facts in their evidentiary summary, which states that Petitioner refused to meet with the County Commissioners. Petitioner in a response on September 22, 1993, simply requested an adequate notice so that she could properly prepare for the meeting - she did not refuse to attend the meeting. [Ex. 84].

(7.) The Intimidation Of The Court By The Board Of Commissioners

The letter that was read at the meeting called on September 24,1993, before an assemblage of newspaper and television reporters [FHT 127], and subsequently mailed to Petitioner is at the root of the instant matter. [Ex. 85]. The letter was read publicly the day after Petitioner held Deputy Deese's rule nisi hearing for civil contempt and immediately after the hour scheduled for Coroner Poole's rule nisi hearing for criminal contempt, which Petitioner indefinitely stayed. [Ex. 86]. The letter itself states the primary reasons for its creation and delivery to Petitioner, which in pertinent part reads:

> ...The last straw was your recent group of memos to Sheriff Becham where you ordered him to do certain things. If you have a problem with the Sheriff, it is your responsibility to get with him and work out

> whatever the situation requires- and not to just serve papers on him. In addition, you have brought contempt charges against his deputy and against the County Coroner. This is not the way to establish a good working relationship with people... [Ex. 85].

The threat aspect of the letter reads:

> ...We have decided to give you 30 days to see if you can get your act together. If you continue with your present attitude, causing problems and conflict in the county government, we will have no choice but to recind your salary increase and return you to the original salary granted to you by the previous commissioners... [Ex. 85].

A reasonable person could conclude just from a reading of the letter, as Petitioner did, that the County Commissioners were attempting to influence Petitioner's conduct with regard to the Court's Orders and the contempt proceedings . However, there is even stronger evidence that this is so. In his testimony before the Commission, Chairman Bartlett testified that he met Coroner Poole to discuss Poole's pending rule nisi hearing for criminal contempt. [FHT p. 77]. After he met with Coroner Poole, Bartlett testified that, "[I] felt like at that point something had to be done and the commissioners got together and decided that we needed to see what we could do". [FHT p. 77]. Bartlett then testified that, "I checked with our attorney and the county attorney advised me that since we had increased her pay, we could decrease her pay. So we wrote a letter to her..." [FHT p. 78]. Further, Bartlett was asked, "When did you all decide you were going to do this?" And

Bartlett answered, "This was , as I recall, almost immediately after she brought the contempt charges against Mr. Poole and then would not come into the courtroom." [FHT p. 126-127]. Bartlett also admits, under oath, that the County Commissioners were trying to use their economic leverage to change Petitioners conduct. [FHT p. 133-134].

Petitioner did perceive that she was being threatened and intimidated in her judicial decisions and the proper functioning of her office by the County Commissioners' September 24, 1993 letter [FHT p. 349, 412, 438], and had the Commissioners been legally able to reduce her salary they would have done just that. It was not until the County Commissioners' counsel changed his legal opinion that the threat to reduce Petitioner's salary did not become a reality. [FHT p. 259].

The County Commissioners admit that they acted on incorrect legal advise in deciding to reduce Petitioner's salary. [FHT p. 261-262]. Furthermore, they did not act in "good faith", even though they got bad legal advise. Not only had Commissioner Bartlett met with the County Attorney seeking legal advise on whether they could vote to reduce Petitioner's salary prior to issuing the September 24th letter, but in Commissioner Jack D. Taylor's deposition, he stated unequivocally that the purpose behind threatening to reduce Petitioner's salary was to "punish" Petitioner. [Deposition of Jack Taylor 59, 60]. Mr. Taylor, of course, denied making this statement in the hearing before this Commission stating instead that the purpose of the threat was that he hoped "harmony should prevail". [FHT p. 259]. On the other hand Bartlett did note that the decision by the previous Board of Commissioners to reduce Petitioner's salary after she was elected, but before she took office, was a "political" decision. [FHT p. 129].

(8.) Petitioners Response To Letter Threatening To Reduce Salary

Petitioner responded initially to the County Commissioners September 24th letter by indicating in her letter of September 27, 1993, that she was reluctant to comment on the matter unless it was official action by the board. She did refer to the letter's content as diatribe which, in fact, accurately described the letter. Webster's dictionary defines diatribe as meaning: 1. a prolonged discourse, 2. a bitter and abusive speech or writing, 3. ironical or satirical criticism. [Ex. 87].

For some unknown reason relative to this time period, the Commission makes a point to state that "after the September 27, 1993, letter, Respondent always signed her correspondence over the title "The Honorable Linda O'Neal". [citing Ex. 87 forward]. But as usual the Commission was wrong in their statement of the facts. Although restrained to stay within the record, Petitioner can and does offer Exhibit 70, a letter dated September 13, 1993, for proof that the Commission misstated the facts again.

The Commission states that 'nowhere in ... this record is there any mention of the alleged "threat" which subsequently gave rise to the felony warrants'. This is not a true statement. The Commission's own Exhibit 160, news articles, indicates that newspapers perceived the County Commissioners' September 24th letter as communicating a "threat".

(9.) The Issuance Of Arrest Warrants Against The County Commissioners

Following receipt of the letter by the Board of Commissioners which threatened to reduce her salary to the

statutory minimum unless she "got her act together", Petitioner did not "act out of personal animosity and anger" and have the Peach County Commissioners arrested, but rather, she felt the Commissioners were trying to "control the court and the actions of the court" and tell her "how to run the court". [FHT p. 349, 355]. Instead of acting out of animosity and anger, Petitioner consulted the law books to determine whether the action by the Board of Commissioners was legal; asked the Board if the resolution adopting the letter was official Board action - which they affirmed [FHT p. 132, 351]; contacted her District Attorney, Mr. Sparks [FHT p. 355-357]; contacted Judge Hughes of Twiggs County [FHT p. 357-359]; talked to Danny Porter, a District Attorney from Gwinnett County whose name was chosen from the phone book [FHT p. 357-358]; talked with Judge Judy Cooper from Clay County [FHT p. 359]; called Judge Kendall Jordan in Hart County and faxed him information [FHT p. 359-361]; faxed the affidavit in support of the arrest warrant to Wayne Purdom, the President of the Magistrate's Counsel [FHT 359-360]; called the Attorney General's Office [FHT p. 361-362], and spoke to Judge Burke from Houston County [FHT p. 362]. Of the several individuals Petitioner contacted and consulted or tried to contact with respect to the criminal nature of the September 24th letter, some did not respond, some who agreed that a crime had been committed had no authority to issue criminal warrants, and all judges who had the authority to issue criminal warrants and who agreed that a crime had been committed refused to issue criminal warrants <u>because of political ramifications</u> [FHT p. 358, 359], with the exception of one. That Judge, Judge Kendall Jordan of Hart County, issued the warrants. The Commission gives the impression that those who refused to issue warrants did not really agree that a crime had been committed or that Petitioner was not truthful in her

testimony, and they accomplish this impression by making the statement, "all refused to issue the requested warrants". Thus, once again mischaracterizing the evidence. The Commission would lead one to believe that Petitioner sought out a personal friend to issue the warrants, but she did not. [FHT p. 364]. Instead, she correctly sought a neutral and detached magistrate judge to review the matter and issue any justified warrants. [FHT p. 359, 426]. Judge Jordan found that sufficient probable cause existed to believe that the County Commissioners had violated O.C.G.A. 16-10-97 and issued the warrants. As Judge Kendall Jordan noted in his deposition, he did not even recognize Petitioner when she came in his door. [Deposition of Jordan, p. 22]. Judge Kendall Jordan felt comfortable signing the warrants after reviewing the law precisely because Petitioner "had waited a period of time. It wasn't like it happened yesterday, this afternoon, or the day before yesterday and I want a warrant today". [Deposition of Jordan, p. 19]. To her credit, Petitioner did wait two months before seeking warrants, as Judge Jordan so aptly noted. Once the warrants were signed on December 21, 1993, to prevent publicity, Petitioner took the warrants with her back to Peach County, and secured them in her office late that evening. The next day, December 22, 1993, Judge Jordan called Petitioner and asked her to hold the warrants so that she could call the Attorney General's office to find out which county's name should go on the warrants, Hart or Peach. [FHT p. 361-362]. Petitioner called the Attorney General's office and Judge Burke. [FHT p. 362].

(10.) Reason Warrants Held 7 Days Before Delivery To Sheriff

Besides the two (2) day delay caused by the issue over the proper county name to be on the warrants, as related earlier in paragraph 9. above, the Christmas Holidays were a factor in the seven day delay from the time the warrants were signed, December 21, 1993, and when they were delivered to the Sheriff for execution. This Court can take judicial notice of the fact that Christmas Eve, December 24, 1993, fell on a Friday in 1993 and Christmas was on Saturday. As a result of Christmas falling on a weekend, the following Monday, December 27, 1993, was also a holiday. The next business day was Tuesday, December 28, 1993. Also, Petitioner did not want to interfere with the Commissioners' Christmas holidays, so she waited until December 28, 1993, to deliver the warrants to the Sheriff's Department. [FHT p. 363]. This deference shown the County Commissioners by Petitioner is inconsistent with the notion that she sought the warrants out of animosity for the commissioners or in retaliation for the September 24, 1993, threat to reduce her salary, as the Commission would have this Court believe.

(11.) Both Petitioner And Magistrate Court Were Victims

Petitioner was in the unique position of being both victim of a crime, with its concomitant responsibilities as lay prosecutor, and the holder of a judicial office against whom she believed a criminal offense had been committed. [FHT p. 355]. O.C.G.A. Section 16-10-97 makes it a crime to endeavor to intimidate or impede by any threatening letter or communication any court of any county or a court officer which arises out of or is related to the performance of the

court officer's official duties, whether the proscribed activity occurs while the court officer is actively engaged of the matter giving rise to the offense or whether the proscribed activity occurs at some other juncture. Moon v. State, 199 Ga. App. 94, 404 S.E.2d 273 (1991). Further, the word "endeavor" is a synonym for "attempt", which means that the threat contained within any threatening letter or communication does not have to be carried out for there to be completion of the crime. The crime is certainly complete upon its receipt and perception as a threat by the victim. As stated earlier, Petitioner did perceive that she had been threatened by the County Commissioners' September 24, 1993, letter. [FHT p. 349, 412, 438].

(12.) Petitioner Did Not Notify The News Media

The Commission, when it attempts to discredit Petitioner, by noting that within 15 minutes of Petitioner's delivery of the warrants to the Sheriff, the sheriff's office began receiving calls from the news media conveniently overlooks the probability that it was someone from within the sheriff's department who originated the call to the news media. It was the sheriff's department that staged the mass turnout of almost all of the deputies at Deputy Deese's Rule Nisi hearing [FHT p. 194; Ex. 167], and it was the County Commissioners who notified the news media to be present for the reading of the letter dated September 24, 1993, which threatened to reduce the Petitioner's salary. [FHT p. 127]. Petitioner had nothing to do with the news media being called, as she so testified [FHT p. 408-409], but the Commission without any facts to support their statements, once more mischaracterizes the evidence.

(13.) Petitioner Should Be Reimbursed For Official Travel Expenses

Petitioner's claim for reimbursement for her mileage to Hart County to obtain the warrants was a proper claim because the criminal charges, in fact, arose out of her official capacity. Because it was an official expense paid personally by Petitioner, it should be reimbursed.

(14.) Dismissal Of County Commissioners' Arrest Warrants

The Commission's comment that the criminal charges against the Commissioners were dismissed is meaningless. As this Court is aware, it is solely within the prosecutor's discretion whether or not to prosecute a particular crime. Warrants are routinely dismissed in every county in this State, not on the basis of whether or not a crime in fact occurred, but rather on the State's ability to prove whether a crime occurred. Prior to the Houston County District Attorney deciding to dismiss these warrants, three (3) magistrate court judges and a district attorney had already indicated that they believed the criminal elements of Intimidation of a Judicial Officer had been met. [FHT p. 357-359]. The individual motivations of why the specially appointed prosecutor dismissed the warrants were not before the Commission nor were they relevant.

(15.) Public Statement After Dismissal Of Warrants Was Ethical Comment

Regarding Petitioner's comment in the Byron Gazette, Petitioner had, and still possesses, an absolute right under the First Amendment of the United States Constitution and

concomitant provision of the Constitution of the State of Georgia to comment on a proceeding in which she is a victim. Her comment in the Byron Gazette was truthful and accurate, and was not a comment about a proceeding pending before her court, and the statement itself was within the guidelines of the Code of Judicial Conduct. [FHT p. 389-390; Ex. 125]. She was in the position of being a victim of a crime. Should victims of crimes not be allowed to use the public forum of newspapers to express their displeasure when the State prosecutor dismisses a case in which they are the aggrieved party?

(16.) Publicity Relative To The Magistrate Court

The Commission claims that Petitioner's conduct is responsible for the negative publicity as may be found in the news stories in this record. Petitioner totally denies responsibility for any such negative publicity. First, many of the news articles enclosed in Plaintiff's Exhibit 160 are not stories of controversy, but just plain informative articles. Second, while some of the news articles report news of a disputed or controversial nature, the negativism is not of the degree that promotes public ridicule, embarrassment, or disgust to a reasonable person. Most importantly, Petitioner is the victim of any negative publicity emanating from any of the news stories, not the perpetrator. Any truthful and factual reporting of Petitioner's conduct would not cause embarrassment to either the public or the judiciary. Lastly, except to that which is permitted by the Code of Judicial Conduct, Petitioner has not commented to the press. Her refusal to comment has resulted in some of the news being biased and inaccurate. Moreover, those individuals bent on political mischief have apparently, as is disclosed by the

articles themselves, seized upon the opportunity to have their say in the press knowing that the Petitioner had to remain silent.

(17.) Complaints From Citizens Of Peach County

Regarding the complaints from citizens allegedly embarrassed by Petitioner, Petitioner replies that the role of judge is not a popularity contest. This is especially true where the opining party is powerful and entrenched, and is being challenged with respect to its lethargic ways. Over half of the persons who complained to the Commission, including Mr. Jack Taylor, Mr. Wilton Walton, Ms. Ann Poole Ward, Mr. Pat Ward, Mr. and Mrs. Orvin Bergmen, Commissioner Charles Bartlett and Mrs. Mary Bartlett, Mike and Joan Pearson, and Jack Hunnicutt, attend the same church. [FHT p. 269, 70]. Several are former co-workers. And nearly all are related by blood, marriage, or business to members of the Peach County Commission. To Petitioner's knowledge no complaints were filed with the Commission until after the Commissioners attempted to unlawfully intimidate Petitioner and were subsequently arrested. All but two (2) complaints were written within approximately one (1) week of one another. [See Appendix A; Ex. 144-159]. Only two of the Complainants have ever even been in Petitioner's courtroom. The close group of apparently solicited complaints totaled 15 from a county with over 20,000 population. To Petitioner's knowledge no complaints were ever filed with the Commission prior to or after this one small group. If Petitioner has really caused public embarrassment by her conduct why are there no other complaints at any other time? Petitioner asserts it is because she is not an embarrassment to the public.

(18.) Commission vs. Trial Court Review Of Issues In Petitioner's Civil Suit

After experiencing for eighteen months the County Commissioners' and there employees' inappropriate and uncooperative behavior, which has negatively affected the court, Petitioner filed a civil complaint against them with a demand for jury trial of the factual issues. [Ex. 168]. The Commission states that Petitioner's civil suit generally seeks to rehash many, if not all, of the issues giving rise to this proceeding. This is simply not true. There are many substantial differences and a jury verdict in the civil case could be quite opposite from the Commission's Findings.

(19.) County Commissioner's Testimony Concerning The Reduced Fee Schedule

Petitioner lowered the fees charged in the Magistrate Court effective September 1, 1993, and issued an order pursuant thereto by the authority granted in Uniform Magistrate Court Rule 1.2, which was posted in the court. [FHT p. 319-320]. Petitioner reduced the filing fees of Peach County because citizens of Peach County had indicated to her that they felt the $48.00 civil suit filing fee was too high. [FHT p. 320-321]. In response, the fees charged by the Magistrate Court for most actions were lowered to $25.00 on September 1, 1993. When citizens began taking advantage of the reduced fee, taking out warrants then wanting to dismiss them, Petitioner raised the cost of dismissing a misdemeanor warrant from $25.00 to $50.00 on November 1, 1993. [FHT p. 321-322]. The fee was raised because, among other reasons, such actions caused excessive paperwork and wasted the Sheriff's time. [FHT p. 321]. In short, Petitioner, by reducing the fees charged by the Magistrate Court, was

responding to the economic needs of the citizens of Peach County. All money assessed as a fine by the Magistrate Court continued to go to the Peach County Commissioners and there has never been any allegation that Petitioner reduced the fines she assessed in her court. On September 13, 1993, Petitioner as discussed earlier issued a set of orders to the Sheriff and his lawful deputies which was followed by rule nisi hearings for contempt being issued against Deputy Deese and Coroner Poole. [September 23 & 24,1993, respectively]. Immediately following these events on September 24, 1993, the County Commissioners published their letter threatening to reduce Petitioner's salary.

Taylor testified that when he asked Petitioner why she would reduce the fee for the service provided by the magistrate that her response was:

> "... because you and Charles Bartlett stuck your nose into something that didn't concern you...This issue is between me and the Sheriff..." [FHT p. 241-243; Ex. 90].

The Commission points to the alleged dialogue between Taylor and Petitioner as evidence of disgusting and demeaning conduct prompted by personal animosity and political motivation. Besides completely denying that this conversation ever took place [FHT p. 325-328], Petitioner explained at length to the Commission how such a conversation was, in fact, an impossibility. Petitioner explained that the alleged comment could not have been said because at the time the fees were lowered, September 1, 1993, the subsequent issuance of the orders to the sheriff and his lawful deputies and the rule nisi hearings associated therewith had not yet occurred. Taylor gets trapped in his lie under cross-examination when he recognizes that the court fees were reduced two (2) weeks prior to the issuance of the Orders to the Sheriff. [FHT p. 257-258]. Further, Taylor is

shown to be less than candid when he testified that he had never seen the fee schedule before being shown it in the hearing [FHT p. 256-257; Petitioner's Ex. 2], but in fact he had seen it at his deposition on August 5, 1994, and Petitioner's Exhibit 2 still bears the deposition Exhibit No. 3 identification sticker on it. [Petitioner's Ex. 2; Taylor's Deposition p. 39-40]. Even though the timing of the events clearly indicate the temporal impossibility of the statement being made, the Commission found Taylor's testimony persuasive. Petitioner respectfully asserts that Taylor's testimony is not persuasive, is less than candid. Petitioner respectively submits to this Court that the Commission's reliance on such evidence and their characterization of same as being persuasive is so grossly misstated that the Commission's impartiality must be seriously questioned.

(20.) Petitioner's attitude is not vindictive

Petitioner, in a very professional and business-like manner attempted to communicate with the County Commissioners by written correspondence on all matters that would possibly be of concern or interest to them or which was relative to or effected the Magistrate Court. Plaintiff's compilation of exhibits fairly demonstrates the correspondence Plaintiff communicated to the County Commissioners. Appendix B provides a quick summary of said correspondence. As can be seen there is absolutely nothing unreasonable about any of the requests contained in Petitioner's correspondence. What is strikingly unusual is the numerous requests for the same equipment, supplies, or information. Such need to make repeated requests clearly evidences the unwillingness to cooperate or incompetence of the individuals to whom the requests were made. After experiencing such difficulty for eight months there is a

natural tendency to be somewhat less polite at times, as Commissioner Bartlett recognized. [FHT p. 137]. The Commission selected two exhibit letters [EX. 61 & 67] and presented them out of context to support their contention that Petitioner has a vindictive attitude. However, no reasonable business or professional person who read Petitioner's letters, including the August 23 and August 25, 1993, letters [EX. 61 & 67], would thereafter conclude that Petitioner had a vindictive attitude. The Commission's taking out of context and mischaracterizing the evidence does show its apparent vindictive attitude towards Petitioner.

(21.) Petitioner Believes That She Has Acted Properly

At the close of Petitioner's testimony Judge Lawson asked Petitioner the following question:

> ...In your judgment today, were all of your actions justified? Do you think you acted properly? I don't mean legally, I am talking about as a matter of judgment, in your judgment today, do you feel that ... the way you handled all these problems was the right way to do it, do you feel that way today?
>
> Petitioner replied: Yes, sir. [FHT 392, 393].

The Commission states that her answer is most telling. But the Commission doesn't bother to explain that vague conclusive remark, as if there is some coded meaning that is suppose to be understood by those qualified to hold judicial office. Petitioner doesn't express herself in any kind of code, she thinks straight, talks straight, and acts straight. She doesn't need to delve into coded language and meaning to be understood. There is nothing wrong with her attitude or judgment, legally or otherwise, and the record shows such by

clear and convincing evidence. Petitioner admitted that she was not perfect, that she was human and that she could make a mistake. [FHT p.393, 394].

(22.) Commission's Denial Of Due Process To Petitioner

(a.) Commission's Bias Attitude Towards Petitioner

The prejudice and bias shown Petitioner by the Commission at the formal hearing is overwhelmingly made clear by the following record colloquy between Mr. Reinhardt and Petitioner, which occurred relative to Petitioner's civil complaint against the Peach County Board of Commissioners [Ex. 168]:

By Mr. Reinhardt:

Q: Well, with respect to your salary and the salary of your clerks and whether or not you have constables, do you understand those are decisions that are made by the County Commissioners in Peach County, even though they are an independent branch of government?

A: They make provisions in the budget and funds for it, yes.

Q: In this lawsuit, you are trying to get the courts to mandate that, are you not?

A: Sir, I am not going to discuss that. That is a pending matter in another court.

Q: Ma'am?

A: That's a pending matter in the court, and I don't think I should discuss that pending lawsuit.

Q: Aren't you the plaintiff in that case?

A: Yes sir.

Present in the courtroom hearing audience during this testimony was three (3) of the defendants in the pending suit, Commission Chairman Charles Bartlett, Commissioner Jack Taylor, and County Administrator Marcia Willis. Sheriff Becham and Deputy Deese were also in the audience. Earlier in the hearing, permission for the witnesses to sit in after they gave their testimony was requested by Ms. Oakley and granted by Judge Lawson. [FHT p. 79, 139].

This attempt by a member of the Judicial Qualification Commission sitting en banc to get Petitioner to discuss her civil suit outside of the court having jurisdiction in the matter and without the aid of retained counsel, and in the presence of party defendants smacks of one of the most gross and egregious ethical improprieties imaginable. Canon 3B.(9), pursuant to the commentary provisions, explicitly prohibits judges from commenting publicly on a mandamus case to which they are a party. If it had not been for the courage, wisdom and ethical judgment of Petitioner to refuse to answer further questioning when she did, serious harm to her litigation may have occurred and she would then have been in violation of the Code of Judicial Conduct. The Commission's prejudice towards Petitioner as shown by this unethical hearing procedure deny Petitioner the due process to which she is entitled.

(b.) Prejudicial Interruption Of Witness's Testimony

The primary reason, according to the Commission, that an investigation and formal charges were brought against Petitioner was because of the arrests of the Peach County Commissioners on felony warrants for intimidation of a court and a court officer, requested by Petitioner. Indeed, the record reflects the importance that matter played in the formal charges being filed against Petitioner. So when testimony regarding the key element of the crime was being elicited on both direct and cross examination, the hiatus moments of the proceeding, no interruption of the testimony should have been allowed by the trial judge except for a most important reason. Certainly a casual break or lunch break is not such a reason. However, Judge Lawson did both. On direct examination as soon as Bartlett answered "no" to the question as to whether the September 24, 1993, letter was intended as a threat to Petitioner, Judge Lawson took a 10 minute recess. On cross examination Petitioner's counsel had just asked Bartlett to look at and to consider the language in the letter deemed to be a threat by Petitioner when Judge Lawson said, "let's stop here for lunch". Petitioner's counsel had just set up the most important cross examination question of the hearing and his stride was just abruptly terminated. Petitioner's counsel was not even asked how much longer he might be with the witness or if he had any objection to breaking for lunch at that time. Such conduct was highly prejudicial to Petitioner's defense and it denied her due process.

(23.) Other Charges Not Discussed In Commission's Evidentiary Summary

(a.) Staff Not Fired And Daughter Left In Charge Of Office

Paragraph F of the Commission's Factual Bases for the charges is a paragraph filled with misstatements and faulty impressions. Petitioner did not fire her staff when they requested raises and then leave the court in the hands of her 18 year-old daughter as this paragraph recklessly suggests. Remaining certified as a Magistrate Court judge requires certification classes. These certification classes are usually held during the week. Petitioner went to great lengths to ensure that the people of Peach County would be adequately served while she was away from office during the period of July 13-15, 1993, at a certification class. Exhibit 44 clearly shows that Petitioner not only gave notice of her need to be out of the office but she sent this notice to the Peach County Sheriff's Department, the Fort Valley Police Department, and the Byron Police Department. This notice was posted on the door to the Magistrate Court. Petitioner obtained the services of Judge Kelly Burke to cover her duties while she was away and left forwarding numbers for her personally, including two telephone numbers and her statewide pager. Additionally, as if that were not enough, Petitioner drove back to Peach County each night to hold court from 5:30 until 6:00 p.m. [FHT p. 377-79]. Is this not exactly the kind of conscientious judge we want in Georgia? You will recall that her predecessor worked approximately 3 hours per day as a part-time job and was paid over $30,305. [Ex. 3].

The employees of the Magistrate Court serve at the pleasure of the magistrate. O.C.G.A. 15-10-106. Petitioner, as is reflected in the exhibits, repeatedly attempted to get the

County Commissions to approve new positions or pay raises for her employees. [FHT p. 81, 385-386]. The Peach County Board of Commissioners declined. [See Ex. 33, 42, 43, 45, 46, 47, 48, 99, and 102]. Petitioner also counseled with her employees detailing exactly what responsibilities she expected them to perform. [FHT p. 381-382; See Ex. 46]. Petitioner dismissed Patty Sanders during her probationary period of temporary employment because of a lack of professionalism and poor work habits. [Ex. 47]. Donna Clark resigned because of a perceived violation of her "civil right". [Ex. 48].

(b.) Alleged Ex Parte Communication

Paragraph II of the Factual Bases is likewise filled with misstatements and misrepresentations concerning an alleged ex parte communication. Petitioner never informed Ms. Moore that she was changing her ruling nor that a new ruling was being issued in her favor. Petitioner did ask Ms. Moore, when she returned a call from one of the Judge's clerks and no one except the Judge was there to answer the phone, to go to the bank and get the present balance on a loan Ms. Moore had obtained for another person. Petitioner was keenly aware at the first hearing of the exact balance on the loan but this information had changed between the time of the first ruling and the second ruling because one bank payment had come due and past in the interim. Petitioner does not feel that she engaged in an ex parte "investigation" but, in explaining her conduct to the Commission, noted for the Commission that the procedure in this situation had changed and that she has since continued a case and brought both parties back. [FHT p. 375]. There is no question but that the correct legal result was reached and, in fact, the case was affirmed on appeal. [FHT p. 370, 372]. Also, it should

be noted that Petitioner committed this alleged ex parte communication within the first three (3) months of being in office, without any prior legal training whatsoever, with the background of a high school diploma and lots of business experience, and prior to having any formal training in civil procedure and judicial ethics.

(c.) Petitioner's Performance Undermined By County Commissioners

Finally, concerning Paragraph VI of the Factual Bases of the charges, Petitioner has attempted to perform the duties of the office of Magistrate Court Judge of Peach County in an efficient, intelligent manner. By the Board of Commissioners' actions in denying Petitioner a comparable salary to that of her predecessor, by denying salary increases for her employees, by denying her request for temporary employees to complete the backlog of work, by refusing to fund constable positions for the efficient service of process, by refusing to fund overtime work, by refusing to authorize necessary office supplies, by refusing to provide her with access to her office, by refusing to provide minimal courthouse security, by refusing to supply functioning chairs for individuals to sit in, by refusing to provide adequate air conditioning during the hot summer months, by refusing to give Petitioner a breakdown of her own budget so she could allocate her resources, and, finally, by the Commissioners threatening to cut her salary to the statutory minimum of $13,125; the Peach County Board of Commissioners has done exactly what Hamilton feared in the Federalist Papers. In short, it is not the judiciary that should be feared but rather the branches of government that control the purse and the sword.

(24.) Denial Of Petitioner's Motion For A Directed Verdict Was Error

Petitioner's Motion For Directed Verdict presented at the close of the Commission's case in chief was denied by the presiding hearing officer without presenting it before the entire Commission in violation of Rule 1 (b) of the Rules of the Judicial Qualifications Commission. Such ruling was a ruling on the merits of the case and by the Commission's Rules a majority of its membership was required. Accordingly substantive error resulted and denied Petitioner due process.

CONCLUSION

Based on the foregoing Petition And Supporting Brief, Petitioner respectfully requests that this Court overrule the FINDINGS AND RECOMMENDATIONS of the Judicial Qualifications Commission, allow for extended oral argument including the presentation of witnesses and thereafter dismiss all charges filed against her by said Commission.

Respectfully submitted,

/s/
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ATTORNEY FOR PETITIONER

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Magistrate judge issues statement

Editor's note: Last week it was reported that Houston County District Attorney Ed Lukemire had made the decision to dismiss intimidation charges against all five Peach County Commissioners. The charges against the commissioners had been brought by the Peach County Magistrate Judge in late December 1993. Following (in its entirety and unedited) is Magistrate Judge Linda O'Neal's official response.

Houston County District Attorney, Mr. Ed Lukemire, the special prosecutor handling the court intimidation charges against the Peach County Commissioners has dismissed the warrants. A decision not to prosecute any case is within the discretionary power of a prosecutor under Georgia law. The prosecutor's discretion is part of the checks and balances incorporated into the American legal justice system. I foremost support the justice system and prosecutor discretion, so my disagreement with Mr. Lukemire's decision will become less important to me as I continue to serve the citizens of Peach County who seek fair, equal, and impartial justice.

The events that preceded the charges may interest the inquisitive reader, so I offer the following detail.

For some, life as an elected official is nothing more than a pastime or game, but for me it is serious business. When I began public service as Chief Magistrate Judge of Peach County, I also began a relationship with certain other elected and non-elected officials who had been in office for many years. That relationship was challenged by some officials who attempted to influence me with the

contemptible political idea which goes, "the way to get along is to go along". I balked because I believe such political thinking promotes and perpetuates mismanagement, injustice, and corruption in government. Instead, I chose to honor my oath of office, to duly and faithfully perform all the duties required of me by law, and to support the Constitution of the United States and of this state. I am determined that as long as I am in office that equality, fairness, impartiality, and absolute adherence to the Georgia Constitution, Statutes, and Case law with respect to all persons coming before and matters pertaining to the Magistrate Court will never be denied the people.

Generally, I was expected to accommodate certain officials' personal whims, and to adjust to apparently long-standing customs, practices and procedures of other government officials, regardless of their propriety. My daily documentation of court activity and matters for 1993 is in excess of 700 pages. This documentation is open to the public for review during normal court hours. It evidences some of the improprieties, uncooperativeness, and incompetence I have faced while in office and it clearly shows the exhaustive effort by me in the form of letters, memo's, telephone calls, and meetings to appropriately respond to such problems.

Hundreds of examples could be stated that demonstrate the problems, but the following should make the point. Frequently, civil and criminal hearings were delayed or had to be postponed because court process had not been properly or timely served, or because law enforcement officers were late or failed to appear or failed to appear with the proper documents. After eight months and many unsuccessful attempts to resolve non-judicially these

disruptive actions or omissions, the court took official action. It exercised its constitutional and statutory powers to control the conduct of its officers by issuing orders to various officers giving them personal notice of their statutory duties and responsibilities with respect to the court. The court's officers to whom the orders were given willfully refused to serve those orders, which prompted the court to institute contempt proceedings against them. The court's judicial contempt power was used as a last resort to preserve order and decorum in the court, to compel respect and obedience to its lawful orders, and to aid in its administration of justice.

Additionally, requests pursuant to Georgia law for necessary supplies and equipment for the proper functioning of the court, although provided for in the court's budget, were regularly ignored or denied. When requested supplies and equipment were provided, it was usually after several requests for the same items had been made or after an inexcusable period of delay. This problem is still occurring.

Necessary administrative written or oral correspondence from the court to county officials or their offices is repeatedly ignored, requiring numerous follow-up letters, memo's, or telephone calls. For example, for over 12 months many letters were sent and telephone calls were made which sought past and present court fiscal budget information from the county clerk and Board of Commissioners. The court needs this information to properly operate and to administer its business. Yet, at the present time nearly all the information requested concerning the court's fiscal budget has not been provided.

Responding to the court's contempt proceedings as previously mentioned, the Board of Commissioners publicly

and in the presence of the news media read a letter directed to me, wherein it was stated in part, "The last straw was your group of memos to Sheriff Becham where you ordered him to do certain things... In addition, you have brought contempt charges against his deputy and against the County Coroner...We have decided to give you 30 days to see if you can get your act together. If you continue with your present attitude...we will have no choice but to rescind your salary increase and return you to the original salary granted to you by the previous commissioners." This statement was read approximately one hour after one of the scheduled contempt hearings.

A simple check of the state law would have revealed to the commissioners that the Georgia Constitution and Statutory law prohibits the reduction of a judge's salary during his or her term in office. Also the Georgia Constitution and Statutes provide that the executive, legislative, and judicial branches of government are to be totally independent and the Georgia Supreme Court has upheld the judiciary's independence. Accordingly, a Board of Commissioners does not have legal authority to supervise any court actions, proceedings, administration, or personnel. Besides, it is generally understood and accepted that government works best when each branch seriously focuses on genuinely fulfilling its own functions for the people as prescribed by the law.

I hope this information provides interested individuals with some insight into the present administration and past actions of the Magistrate Court of Peach County.

Supreme Court, U.S.
FILED
JUL 26 1995
OFFICE OF THE CLERK

(2)

No. 95-18

In The

Supreme Court of the United States

October Term, 1995

LINDA O'NEAL,

Petitioner,

v.

JUDICIAL QUALIFICATIONS COMMISSION OF GEORGIA,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Georgia

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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July 26, 1995

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QUESTION PRESENTED

Will this Court grant the writ of certiorari to review the final decision of the Supreme Court of Georgia in a purely state matter involving nothing more than disciplinary proceedings against an inferior court judge for proven violations of the Georgia Code of Judicial Conduct conducted in full compliance with the published Rules of the Georgia Judicial Qualifications Commission?

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

State Disciplinary Agency:

Georgia Judicial Qualifications Commission

Respondent:

Chief Magistrate Linda O'Neal

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

A. PRELIMINARY STATEMENT 1

B. PROCEEDINGS BELOW 3

C. APPLICABLE FACTS 4

SUMMARY OF THE ARGUMENT 7

REASONS FOR DENYING THE PETITION 7

CONCLUSION 9

APPENDIX (Indexed in separate volume)

TABLE OF AUTHORITIES

Page

Cases

Hanson v. Kent, 263 Ga. 124, 428 SE2d 785 (1993) 6

McCorquodale v. Stynchcombe, 239 Ga. 138, 236 SE2d 486 (1977) 6

Constitutional Provisions

Article VI, Sec. VII, Par. VI, VII and VIII, 1983 Georgia Constitution.....2, 3

Codes and Rules

Georgia Code of Judicial Conduct..... 2

Rules of the Judicial Qualifications Commission..... 2

Rules of the Supreme Court of the United States ...1, 4

Treatises and Articles

Robert L. Stern et al., *Supreme Court Practice* (7th ed. 1993) 8

State Court Decisions and The Supreme Court, 31 *Penn. Bar Assn.* Q., 393, 399-400 7

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STATEMENT OF THE CASE

A. Preliminary Statement

It should be noted that, as of July 24, 1995, Petitioner has not notified Respondent or its counsel of the date of filing and of the docket number of this case in the manner required by Supreme Court Rule 12.1, nor has any such notice been served as required by Rule 29. Counsel for Respondent did receive three (3) copies of the Petition by mail on June 29, 1995 and, by subsequent telephone calls to the office of the Clerk of this Court, ascertained the

information required by the above-cited Rule and is thus in position to timely file this Brief in Opposition.

The Georgia Judicial Qualifications Commission (the "Commission") was created by Constitutional amendment in 1972 and is empowered to conduct investigations and hearings with respect to complaints of misconduct by Georgia judges. The Commission is composed of two (2) judges appointed by the Supreme Court of Georgia; three (3) lawyers, each with at least ten years experience, appointed by the State Bar of Georgia; and two (2) non-lawyers appointed by the Governor. These provisions have been carried forward in successive Constitutions, and a copy of the current provisions, Art. VI, §VII, ¶¶ VI, VII and VIII of the 1983 Georgia Constitution, as amended, is appended at App. 1. The Commission functions under rules promulgated by the Supreme Court of Georgia. The Rules applicable to this proceeding, as amended, are published in Ga. Ct. & Bar Rules, p. 14-1 and are appended at App. 5. Among other things, the Commission may, after investigation and hearing, *recommend* to the Supreme Court of Georgia the removal, discipline or retirement of a judge found to be in violation of the Georgia Code of Judicial Conduct, but the final decision lies with the Supreme Court of Georgia, which may accept, reject or modify any recommendation from the Commission. The Georgia Code of Judicial Conduct is published in the Ga. Ct. & Bar Rules, p. 13-1, and is appended at App. 40.

The grounds upon which a Georgia judge may be disciplined, removed or retired from office, as stated in the Georgia Constitution, include, among others, (i) willful misconduct in office; (ii) willful and persistent failure

to perform duties; and (iii) conduct prejudicial to the administration of justice which brings the judicial office into disrepute. Art. VI, §VII, ¶ VII, 1983 Georgia Constitution. (App. 1).

B. Proceedings Below

Acting pursuant to its Rules and upon receipt of some fifteen (15) complaints from citizens of Peach County, Georgia, expressing concern and, in some instances, outrage over Petitioner's conduct, the Commission conferred privately with Petitioner (to no avail); conducted a full investigation; and ultimately filed Formal Proceedings. The Notice of Formal Proceedings is not reported but is appended at App. 75.

After a two-day evidentiary hearing and review of a 445 page transcript and 174 exhibits, the Commission filed its Findings and Recommendations with the Supreme Court of Georgia. These Findings and Recommendations are not reported, but are appended to the Petition for Writ of Certiorari.[1] Following the denial of Petitioner's Request for Oral Argument, and after consideration of the "Petition and Brief in Objection,"[2] the Supreme Court of Georgia, in a 5 to 1 decision (Chief Justice Hunt not participating), accepted the Findings and Recommendations of the Commission and ordered Petitioner removed from office.[3] Petitioner's Motion for

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[1] Petition for Writ of Certiorari, App. at A12-29.

[2] Petition for Writ of Certiorari, App. at A53-89.

[3] Petition for Writ of Certiorari, App. at A1-7.

Reconsideration[4] was denied by Order dated March 30, 1995. It should be noted that both of Petitioner's pleadings were signed by two (2) duly licensed attorneys, one of whom participated in the representation of Petitioner at the Formal Hearing. More importantly, it was not until the filing of the Motion for Reconsideration that Petitioner first attempted to assert the so-called constitutional issues which are now alleged to be so exceptional and novel as to warrant the grant of this writ by this Court.

C. Applicable Facts

No useful purpose would be served by attempting to detail each and every misstatement, omission and exaggeration contained in Petitioner's Statement of Facts. Suffice it to say that the factual basis upon which the decision is premised is plainly and fully set forth in the Findings and Recommendations of the Commission filed in the Georgia Supreme Court[5]; is supported in every instance by cited transcript references; and was obviously sufficient to convince the Supreme Court of Georgia that the Commission had carried its burden of proving the charges by clear and convincing evidence.[6]

Nevertheless, and in keeping with the admonition contained in Supreme Court Rule 15.1, the Commission is compelled to set forth additional facts relating to Petitioner's alleged claim of inadequate legal counsel at the hearing before the Commission. Rather than recite the

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[4] Petition for Writ of Certiorari, App. at A33-51.

[5] Petition for Writ of Certiorari, App. at A15-23.

[6] Petition for Writ of Certiorari, App. at A3, ¶ 1, A7, FN5.

factual and procedural history which led the Supreme Court of Georgia to deny promptly without opinion Petitioner's Emergency Motion to Continue the scheduled pre-hearing conference, as well as the Formal Hearing (which history is omitted from the instant application), this Court is respectfully referred to the Commission's response to said Motion filed in the Supreme Court of Georgia and appended at App. 79, particularly the letter from the designated Presiding Judge to counsel for Petitioner dated September 20, 1994 appended at App. 101-102. As more fully shown in this pleading, counsel for Petitioner had been granted repeated continuances; was advised at least nine (9) days prior to the Formal Hearing that no further continuance would be granted; and the two attorneys who actually represented Petitioner at the hearing had both been involved in previous proceedings in this matter.

Following Supreme Court denial of the Motion to Continue, Petitioner's counsel attended the pre-hearing conference and gave no indication that further efforts to seek a continuance were anticipated; confirmed a previous stipulation by counsel to use the same documents as those to be offered by the Commission; and was given all the information he sought. A transcript of pertinent portions of the pre-hearing conference is appended at App. 105.

Subsequently, and in response to Petitioner's oral Motion for Continuance at the outset of the Formal Hearing, the Commission offered to continue the hearing on condition that Petitioner take a temporary leave of

absence during the pendency of the requested continuance. Continuing to demonstrate the defiant and confrontational attitude which essentially led to these proceedings, Petitioner rejected this offer and went forward without further protest or objection. An excerpt from the Formal Hearing transcript detailing this ruling and Petitioner's decision to proceed is appended at App. 115.[7]

Viewed in this light, Petitioner's misstatements and omissions become transparent and her claim of inadequate counsel fails.

Additionally, under well-established Georgia law, the grant or denial of a continuance is within the discretion of the trial court, and such decisions will not be interfered with unless it clearly appears that the judge abused his discretion. *Hanson v. Kent*, 263 Ga. 124, 428 SE2d 785 (1993); *McCorquodale v. Stynchcombe*, 239 Ga. 138, 236 SE2d 486 (1977).[8] Petitioner has made no such showing and the mere denial of a Motion to Continue simply

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[7] It also should be noted that yet another experienced attorney who had previously assisted in representing the Petitioner joined the proceeding at this time and actively participated in the hearing until such time as he requested permission to be excused. App. 118.

[8] In *Kent*, a pro se plaintiff requested a continuance in order "to prepare a proper case in this action," 263 Ga. at 124, and in *McCorquodale*, appellant argued that denial of his oral motion for a continuance during his habeas hearing was a violation of his constitutional rights to due process and effective assistance of counsel under the Sixth and Fourteenth Amendments, 239 Ga. at 139.

cannot successfully be converted into a legitimate claim of inadequate counsel.

Simply stated, Petitioner was ably represented at every stage of this proceeding by duly licensed, well-qualified and experienced members of the State Bar of Georgia; the denial of her motion for continuance by both the Supreme Court of Georgia and the Commission was not an abuse of discretion; and her claim of inadequate counsel is untenable and insufficient to warrant the granting of this petition.

SUMMARY OF THE ARGUMENT

The Petition for Writ of Certiorari should be denied because the case involves nothing more than a state disciplinary proceeding conducted under applicable and controlling state procedures and raises no special and important reason to justify United States Supreme Court review.

Further, there is no conflict among the United States Courts of Appeal or the state courts of last resort on the questions presented.

REASONS FOR DENYING THE PETITION

Petitioner asserts three (3) reasons for granting the Writ, the last of which involving the alleged inadequacy of counsel has been discussed hereinabove. (infra pp. 4-7).

Seizing upon language found only in a single dissenting opinion, Petitioner asserts two (2) additional reasons

which are alleged to raise what are called (i) issues of "exceptional legal importance" to judges who express public opinion about social, political or governmental matters and (ii) a "novel issue" of great legal significance for judges who are called before disciplinary bodies on charges of misconduct.

As previously noted, neither of these so-called constitutional issues were raised until the filing of Petitioner's last-ditch Motion for Reconsideration in the Georgia Supreme Court. That Court apparently considered such arguments to be so lacking in merit that said Motion was denied within three (3) days of its filing.

Furthermore, neither of these asserted reasons present a constitutional issue of great importance. Rather, an inferior court judge has been judged guilty of numerous violations of a state code of judicial conduct by a constitutionally created state commission composed of state judges, lawyers and lay persons in a proceeding conducted in full compliance with applicable rules, and that decision has been affirmed and reaffirmed by the highest court of the State of Georgia.

It is thus obvious that this matter involves a state disciplinary commission acting pursuant to state constitutional provisions in a proceeding against a state judge for alleged judicial misconduct. As thus viewed, the constitutional issues belatedly sought to be raised to invoke the jurisdiction of this Court fall far short of those generally required by this Court. Robert L. Stern, et al., *Supreme Court Practice*, §4.12, pp. 185-187.

Finally, and assuming arguendo that the instant petition is sufficient to survive the jurisdictional tests stated

by Justice Brennan, *State Court Decisions and The Supreme Court*, 31 *Penn. Bar Assn. Q.*, 393, 399-400 (1960), the petition nevertheless does not fall within any of the eleven (11) considerations generally considered to be relative to the appropriateness of exercising the discretionary certiorari jurisdiction of this court. Robert L. Stern, et al., *Supreme Court Practice*, §4:25, pp. 208-210.

In sum, the issues sought to be raised simply do not rise to the level of national importance which warrants review by this Court. Rather, the issues are purely local in nature; arise only in extremely isolated cases; and the well-reasoned opinion of the Georgia Supreme Court construing and applying provisions of a Code of Judicial Conduct promulgated by that Court provides ample guidance to other Georgia judges subject to the disciplinary powers of the Georgia Supreme Court.

CONCLUSION

For all these reasons, the Petition for the Writ of Certiorari should be denied.

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Supreme Court, U.S.
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INDEX TO APPENDIX

Article VI, §VII, ¶VI, VII and VIII, 1983 Georgia Constitution .....App. 1

Rules of the Judicial Qualifications Commission, as amended (effective March 1, 1994) .....App. 5

Georgia Code of Judicial Conduct (effective Jan. 1, 1994) .....App. 40

Notice of Formal Proceedings .....App. 75

Response of the Judicial Qualifications Commission to Petitioner's Motion for Continuance Filed in Supreme Court of Georgia .....App. 79

Excerpt from Pre-Hearing Conference Transcript App. 105

Excerpt from Formal Hearing Transcript Re: Oral Motion for Continuance .....App. 115

Paragraph VI. Judicial Qualifications Commission; power; composition.

The power to discipline, remove, and cause involuntary retirement of judges shall be vested in the Judicial Qualifications Commission. It shall consist of seven members, as follows:

(1) Two judges of any court of record, selected by the Supreme Court;

(2) Three members of the State Bar of Georgia who shall have been active status members of the state bar for at least ten years and who shall be elected by the board of governors of the state bar; and

(3) Two citizens, neither of whom shall be a member of the state bar, who shall be appointed by the Governor.

Paragraph VII. Discipline, removal, and involuntary retirement of judges.

(a) Any judge may be removed, suspended, or otherwise disciplined for willful misconduct in office, or for willful and persistent failure to perform the duties of office, or for habitual intemperance, or for conviction of a crime involving moral turpitude, or for conduct prejudicial to the administration of justice which brings the judicial office into disrepute. Any judge may be retired for disability which constitutes a serious and likely permanent interference with the performance of the duties of

office. The Supreme Court shall adopt rules of implementation.

(b)(1) Upon indictment for a felony by a grand jury of this state or by a grand jury of the United States of any judge, the Attorney General or district attorney shall transmit a certified copy of the indictment to the Judicial Qualifications Commission. The commission shall, subject to subparagraph (b)(2) of this Paragraph, review the indictment, and, if it determines that the indictment relates to and adversely affects the administration of the office of the indicted judge and that the rights and interests of the public are adversely affected thereby, the commission shall suspend the judge immediately and without further action pending the final disposition of the case or until the expiration of the judge's term of office, whichever occurs first. During the term of office to which such judge was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the judge shall be immediately reinstated to the office from which he was suspended. While a judge is suspended under this subparagraph and until initial conviction by the trial court, the judge shall continue to receive the compensation from his office. After initial conviction by the trial court, the judge shall not be entitled to receive the compensation from his office. If the judge is reinstated to office, he shall be entitled to receive any compensation withheld under the provisions of this subparagraph. For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that

office shall be chosen as provided in this Constitution or the laws enacted in pursuance thereof.

(2) The commission shall not review the indictment for a period of 14 days from the day the indictment is received. This period of time may be extended by the commission. During this period of time, the indicted judge may, in writing, authorize the commission to suspend him from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement, or declaration of vacancy as are provided in this subparagraph for a nonvoluntary suspension.

(3) After any suspension is imposed under this subparagraph, the suspended judge may petition the commission for a review. If the commission determines that the judge should no longer be suspended, he shall immediately be reinstated to office.

(4) The findings and records of the commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose. The findings and records of the commission shall not be open to the public.

(5) The provisions of this subparagraph shall not apply to any indictment handed down prior to January 1, 1985.

(6) If a judge who is suspended from office under the provisions of this subparagraph is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the judge shall be reinstated to office. The judge shall not be reinstated under this provision if he is not so tried based on a continuance granted upon a motion made only by the defendant.

(c) Upon initial conviction of any judge for any felony in a trial court of this state or the United States, regardless of whether the judge has been suspended previously under subparagraph (b) of this Paragraph, such judge shall be immediately and without further action suspended from office. While a judge is suspended from office under this subparagraph, he shall not be entitled to receive the compensation from his office. If the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the judge shall be immediately reinstated to the office from which he was suspended and shall be entitled to receive any compensation withheld under the provisions of this subparagraph. For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be chosen as provided in this Constitution or the laws enacted in pursuance thereof. The provisions of this subparagraph shall not apply to any conviction rendered prior to January 1, 1987.

Paragraph VIII. Due process; review by Supreme Court.

No action shall be taken against a judge except after hearing and in accordance with due process of law. No removal or involuntary retirement shall occur except upon order of the Supreme Court after review.

Rules of the Judicial Qualifications Commission

The Constitution of the State of Georgia of 1983 provides that "the Supreme Court shall adopt rules of implementation" for discipline, removal, and involuntary retirement of judges (OCGA Article VI, §VII, ¶VII).

The following are rules adopted by the Supreme Court governing the functions of the Judicial Qualifications Commission:

Definition of Sanctions

The following working definition for disciplinary sanctions shall apply in all proceedings of the Commission, both formal and informal:

(a) *Admonition*: A private communication reminding a judge of ethical responsibilities and giving a gentle or friendly warning to avoid future misconduct or inappropriate practices. An admonition may be used to give authoritative advice and encouragement or to express disapproval of behavior that suggests the appearance of impropriety even though it meets minimum standards of judicial conduct.

(b) *Private Reprimand:* A private communication that declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to merit a public sanction.

(c) *Public Reprimand:* A public communication administered by a judicial officer which declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to warrant a censure.

(d) *Censure:* A public declaration by the Supreme Court that a judge is guilty of misconduct that does not require removal from office.

(e) *Suspension:* A decision by the Supreme Court to suspend a judge from office temporarily, with or without pay, for serious misconduct that merits more than a censure but less than removal. This sanction is flexible, and there are no restrictions on the length of a suspension.

(f) *Removal:* A decision by the Supreme Court to remove a judge permanently from office for serious misconduct.

(g) *Retirement:* A decision by the Supreme Court to retire a judge for a disability that seriously interferes with the performance of judicial duties that is or is likely to become permanent.

RULE 1

Members and Their Terms

(a) The power to discipline, remove and cause involuntary retirement of judges is vested in the Judicial Qualifications Commission, which consists of seven members, as follows:

(1) Two judges of any court of record, selected by the Supreme Court;

(2) Three members of the State Bar of Georgia, who have been active status members of the State Bar for at least ten years, and who shall be elected by the Board of Governors of the State Bar, and

(3) Two citizens, neither of whom shall be members of the State Bar, who shall be appointed by the Governor (Article VI, §VII, ¶VI, Constitution of Georgia of 1983).

(b) All member of the Commission shall serve for terms of four years each and until their successors are elected or appointed and are qualified. Whenever any member ceases to hold the office or to possess the qualifications which entitle the member to be appointed a member, the member's membership shall terminate, and the appointing authority shall select a successor for the unexpired term. No member of the Commission shall receive any compensation for services, but shall be allowed necessary expenses for travel, board and lodging incurred in the performance of Commission duties. No member of the Commission, except judges, shall hold any other public office or be eligible for appointment to a State judiciary office while holding membership on the Commission. No member shall hold office in any political party or organization. No act of the Commission shall be valid unless concurred in by a majority of its membership.

(c) A vacancy shall occur when a Commission member becomes unable to continue service for any reason. An appointment to fill a vacancy for the duration of the unexpired term shall be made by the appropriate authority. If a vacancy is not filled at the end of sixty (60) days, the Commission shall appoint from the category to be represented a member who shall serve until such time as an appointment shall be made by the appropriate authority.

(d) A temporary vacancy shall occur when a Commission member becomes unable to attend a formal hearing

for any reason. The Commission is authorized but not required to appoint a former member from the category to substitute at such formal hearing and subsequent action related to the hearing in lieu of such non-serving member.

RULE 2

Officers and Their Duties

(a) The Commission shall select from its members a Chairperson, a Vice Chairperson, and such other officers as the Commission may consider proper and helpful in carrying out its functions, who shall serve at the pleasure of the Commission. A member may be elected to more than one office.

(b) The Chairperson shall preside at all general meetings of the Commission as well as at formal hearings concerning the conduct or disability of a judge. If the Chairperson is not a lawyer, the Chairperson shall appoint a member of the Commission who is a lawyer to preside at any hearing held by the Commission. The Chairperson shall be responsible for the custody and safekeeping of all the records of the Commission, shall promptly furnish to members of the Commission copies of all complaints, notices, answers and other documents filed in connection with proceedings before the Commission, and shall perform such other duties as are indicated in these rules or as are customarily performed by a Chairperson. The Chairperson shall also annually make a report to the Supreme Court of the actions of the Commission but shall not set forth therein the name of or

otherwise identify a judge with respect to matters which are confidential under the provisions of Rule 20.

(c) In the event the Chairperson is absent or is otherwise unable to attend a meeting or to perform the duties of office at a particular time, those duties shall be performed by the Vice Chairperson, and in the absence of the Vice Chairperson, by a member of the Commission designated by those present.

(d) The Director or, if the Director is absent, such member of the Commission as the Chairperson shall designate, shall have the duty of recording in the minute book, as a permanent record of the Commission, the action of the Commission at each meeting.

(e) The Commission may, at its discretion, designate a Director who shall serve at the pleasure of the Commission and shall have such duties, powers and authority as may be, from time to time, fixed, determined or delegated by the Commission. The Director may be authorized by the Commission to issue subpoenas on its behalf.

RULE 3

Meetings

(a) The Chairperson may, and upon the request of three members shall, call a meeting of the Commission. The Chairperson shall give reasonable notice to each member by telephone or other means of the time and place of the meeting.

(b) Decisions by the Commission to conduct an investigation of a judge, order a judge to submit to a physical examination, proceed against a person for contempt for

failing to respond to a subpoena of the Commission, issue a public statement, institute contempt proceedings against a person for violation of the confidentiality provisions of the rules, hold or not to hold a formal hearing, hear additional evidence, make a report to the Supreme Court recommending removal, other discipline or retirement of a judge, or deciding after a formal hearing not to make such a report, shall be made at a formal meeting of the Commission. Decisions with respect to other matters may be arrived at through communications between the members of the Commission, but a report of such action shall be made by the Chairperson at the next meeting of the Commission and entered in the minutes of that meeting.

(c) Four members of the Commission shall constitute a quorum for the transaction of business at any formal meeting or for the conduct of a formal hearing, and if a quorum is present at a meeting, the vote of a majority of those in attendance shall be considered the official action of the Commission, except that a vote of a majority of the members of the Commission shall be required for a recommendation of discipline to the Supreme Court.

RULE 4

Complaints – Investigations

(a) The Commission shall require that all complaints shall be made to it in writing and the Commission, when it considers it appropriate, may require that the same be verified. A complaint shall not be a pre-requisite to action by the Commission, but the Commission may act on its

own motion in those cases where the Commission considers it appropriate.

(b) Upon receiving a complaint or otherwise receiving information indicating that a judge may have been guilty of willful misconduct in office, or willful and persistent failure to perform the duties of a judge, or habitual intemperance, or conduct prejudicial to the administration of justice which brings the judicial office into disrepute, or that a judge may have a disability that seriously interferes with the performance of the judge's duties which is or is likely to become permanent, the Commission may make an initial inquiry of the judge for such written comments with respect to the matters involved as the judge may wish to make; and, with or without making such initial inquiry, and with or without notice or other information being given to the judge, as the Commission may consider best, the Commission may conduct an investigation of the conduct or condition of the judge for the purpose of determining whether formal proceedings should be instituted and a hearing held. However, prior to any determination that a formal hearing will be held, the judge shall be sent a copy of the complaint or a synopsis of the matters to be or which have been investigated and the judge shall thereafter be given reasonable opportunity to make such statement to the Commission as the judge considers desirable. Such statement may be made, as the judge may elect, personally or by counsel, verbally or in writing, and may or may not be under oath. In exercising this right, the judge shall not have the right to call witnesses nor to confront nor cross-examine the person making the complaint or any person interviewed by the Commission or its duly authorized representative.

If, after being notified by the Commission, the judge does not respond within a reasonable time or within the time fixed by the Commission, the right to make such statement shall thereupon terminate. In making an investigation, the Commission may issue subpoenas for witnesses to appear before the Commission's representative for the purpose of making a sworn statement and may likewise issue subpoenas for the production of books, papers and other evidentiary matter which are pertinent to the inquiry.

(c) Whenever the Commission reaches the conclusion that a complaint fails to state, or the facts developed upon an initial inquiry to the judge or an investigation fail to show, any reason for the institution of disciplinary proceedings, the Commission shall so advise the complainant and at the same time shall inform the complainant of the confidentiality provisions of Rule 20. The Commission shall also so notify the judge, except that with respect to complaints which are rejected because they fail to state any grounds for disciplinary proceedings, the Commission may, but is not required to, advise the judge thereof.

(d) After receipt of a complaint or of information indicating that a judge may have been guilty of conduct which might warrant discipline, or that a judge may be disabled, the Commission, before voting to hold a formal hearing, may delegate to one or more of its members the authority and responsibility to personally and confidentially confer with the judge subject to the inquiry, and to make informal recommendations to the judge concerning

the subject matter of the inquiry and a satisfactory disposition thereof; and if the judge agrees to the Commission's suggested disposition, the matter may be disposed of on the basis of the agreement reached. If such agreed disposition is made on the basis that it be made public, the Commission shall file a report of the disposition in the Supreme Court.

(e) The foregoing shall not be construed to mean that the Commission may not at any time entertain and act upon a proposal from a judge for disposition of any matter pending before the Commission concerning such a judge, provided that if such proposal is made after notice of formal hearing, and is found acceptable to the Commission, a report thereof shall be filed in the Supreme Court and such report shall not be considered confidential.

RULE 5

Institution of Formal Proceedings – Notice – Judge's Answer

(a) When after receiving a complaint or otherwise obtaining information concerning the conduct or physical or mental condition of a judge, the Commission has made such investigation of the complaint or information as the Commission considers needful and proper, and the judge has been given the opportunity to make a statement to the Commission as stated in Rule 4(b), the Commission concludes that a formal hearing should be held, the Commission shall issue, as promptly as possible, a written notice to the judge advising the judge of the institution of formal proceedings to inquire into the charges against the

judge. The proceedings shall be entitled: "Before the Commission on Judicial Qualifications, Inquiry Concerning Judge ___."

(b) The notice shall specify the charges against the judge with sufficient fullness to enable the judge to understand the nature thereof and shall advise the judge of the right to file a written answer to the charges; and a copy of such notice shall be filed in the Supreme Court.

(c) Within thirty (30) days after service of the notice of formal proceedings, the judge shall file with the Commission an original and six (6) copies of a verified answer. The notice of formal proceedings and the answer shall constitute the pleadings. No further pleadings shall be filed, except by way of amendment as provided for in Rule 9.

RULE 6

Hearing Before Commission or a Special Master

Upon the filing of an answer or upon expiration of the time for its filing, the Commission shall promptly order a hearing to be held before it concerning the removal, other discipline or retirement of the judge, or the Commission may request the Supreme Court to appoint a Special Master to hear and take evidence in such matter and to report thereon to the Commission. The Commission shall set a time and place for the hearing, and shall give notice thereof to the judge at least twenty (20) days before the date thereof.

RULE 7

Conduct of Hearing

(a) At the time and place set for the hearing, the Commission or the Special Master may proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

(b) The proceedings at the hearing shall be reported by a qualified reporter.

(c) At the hearing before the Commission or a Special Master appointed by the Supreme Court, legal evidence only shall be received, and oral evidence shall be taken on oath or affirmation.

(d) The Chairperson or presiding member of the Commission, if the hearing is held before the Commission, or the Special Master appointed to conduct the hearing, shall administer oaths or affirmations to witnesses, rule on the admissibility of evidence, and otherwise direct the manner or order of proceedings as a judge of a court of record.

(e) The Rules of Evidence applicable to civil cases shall apply at all hearings before the Commission or the Special Master, and the standard of proof shall be clear and convincing evidence. In all such hearings, the burden of proof shall be upon the counsel for the Commission.

RULE 8

Rights of Judge in Connection with Hearing

(a) Within fifteen (15) days after such notice of formal hearing has been mailed to or otherwise served upon the

judge, it shall be the duty of the Commission to furnish to the judge as of the time of such notice the names of all persons and their addresses who have been interviewed by the Commission or its representative in investigating the charges set out in the notice of a formal hearing, as well as a copy or transcript of all statements of testimony, whether signed or unsigned, of any person so interviewed in connection with such charges and copies of all documents, writings, papers, records or other evidentiary material relevant to such charges which have been obtained by the Commission or its representative and reviewed by the Commission.

(b) If, after furnishing such information and prior to the date of the hearing, the Commission or its representative shall interview any other person or persons in connection with such charges, the Commission shall promptly inform the judge or the judge's counsel of the name and address of such other person or persons.

(c) If a witness is discovered or interviewed or any documentary or other tangible evidence is discovered or comes into the possession of the Commission or its representative after the hearing has begun, the Commission shall promptly inform the judge or the judge's counsel of the name and address of such witness and promptly furnish a copy of such documentary or other tangible evidence to the judge or the judge's counsel.

(d) The foregoing provisions shall not be construed as requiring that the Commission furnish to the judge any communications between members of the Commission or its representative or any other records of the Commission.

(e) In either of the situations described in Paragraphs (b) and (c), the Commission, upon compliance with the requirements of such paragraphs, shall be authorized to hear the testimony of any such witness or to admit into evidence any documentary or tangible evidence. However, the Commission may take such action with respect to the hearing either by way of postponement, recess or adjournment of the hearing to some future date as, upon a specific motion made by the judge therefor, may seem proper for the protection of the judge in the adequate presentation of a defense.

(f) At the hearing the judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence; to be represented by counsel; to examine and cross-examine witnesses; and to have subpoenas issued for attendance of witnesses to testify or for the production of books, papers and other evidentiary matters.

(g) When a transcript of testimony has been prepared at the expense of the Commission, a copy thereof, upon request, shall be available for use by the judge and counsel in connection with the proceedings, or the judge may arrange to procure a copy at his or her expense. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at the judge's expense.

(h) If, in a proceeding before the Commission, the Commission should be in doubt as to the competency of the judge, the Commission may appoint a guardian ad litem or take such other action as the Commission may consider appropriate.

RULE 9

Amendments to Notice and Answer

The Special Master, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or set forth additional facts and charges whether occurring before or after the commencement of the hearing. In case an amendment is allowed to the notice of formal hearing, the judge shall be given reasonable time both to answer the amendment and to prepare and present a defense against the matters set forth therein.

RULE 10

Report of Special Master

(a) Within twenty (20) days after the conclusion of a hearing before a Special Master and the Master's receipt of a transcript of the evidence, the Special Master shall prepare and transmit to the Commission a report which shall contain a brief statement of the proceedings, findings of fact, any conclusions of law with respect to the issues presented by the notice of formal hearing and the answer thereto, or if there be no answer, findings of fact and any conclusions of law with respect to the allegations in the notice of formal hearing. The report shall also contain the Special Master's recommendation as to whether the Commission shall or shall not recommend discipline. The report shall be accompanied by a transcript of the evidence.

(b) Upon receiving the report of the Special Master, the Commission shall promptly serve a copy on the judge.

RULE 11

Objections and Briefs

(a) With [sic] fifteen (15) days after a copy of the Special Master's report is served on the judge, the judge may file with the Commission an original and six (6) copies of a statement of objections to the findings of fact and conclusions of law contained in the report of the Special Master and may file an original and six (6) copies of a brief in support thereof.

(b) If the judge does not contest the findings of fact or conclusions of law as set forth in the Special Master's report, the judge may, nevertheless, within such time file an original and six (6) copies of a brief in support of a claim that such findings and conclusions are not sufficient to justify removal, other discipline or retirement.

(c) In making a report, the Commission, when there is a report of a Special Master, may accept, modify or reject any or all of the findings of fact and conclusions of law of the Special Master as well as the Special Master's recommendation to the Commission that it recommend or not recommend discipline.

(d) If a formal hearing is held by the Commission, the judge may, within a reasonable time after the termination of the hearing as may be fixed by the Commission, file an original and six (6) copies of a brief with the Commission in support of the judge's claim that the Commission

should not recommend removal, other discipline or retirement.

RULE 12

Additional Evidence

In a proceeding pending before it, the Commission may, at any time after a formal hearing is held, order an additional hearing for the taking of additional evidence; provided that where a Special Master has been appointed, additional evidence shall be taken by the Special Master upon his or her own motion or by order of the Commission, and no such hearing for the taking of additional evidence shall be held by the Commission itself until after the Special Master has made a report. After the Special Master has made a report, the Commission may take additional evidence, or direct the Special Master to do so and report findings of fact and conclusions of law with respect thereto. The judge shall be given ten (10) days notice of the hearing to take additional evidence.

RULE 13

Extensions of Time

The Chairperson of the Commission may extend for periods not to exceed thirty (30) days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, for the transmittal of the Special Master's report to the Commission, and for filing a statement of objections to the report of the Special Master, and a Special Master may similarly extend the

time for the commencement of a hearing. The Commission may grant such additional extension of time as it may consider proper.

RULE 14

Recommendation of Commission of Removal, Other Discipline or Retirement

(a) The Commission may make a report recommending to the Supreme Court that a judge be (1) removed from office; (2) removed from office and prohibited from thereafter holding judicial office; (3) suspended from office for a specified period of time together with such other conditions and restrictions as the Commission may consider proper; (4) censured; (5) reprimanded; (6) retired; or (7) subjected to such other discipline as may seem to the Commission appropriate. In the case of a recommendation of censure, the same, if approved by the Supreme Court, shall be administered in open Court. If the Commission recommends a reprimand and such recommendation is approved by the Court, the same shall be administered by the Court at such place and in such manner as the Court may consider proper.

(b) The report shall be signed by the members of the Commission concurring therein and shall indicate if any member or members dissent from the report. Any member who does not agree with the report of the majority of the Commission may file a written dissent or special concurrence which shall be made a part of the record. The report shall be filed in the Supreme Court and shall be accompanied by the Special Master's report, if any, and a transcript of the evidence. A copy of the report as filed

shall be promptly served upon the judge and evidence of such service shall be filed in the Supreme Court.

RULE 15

Suspension by the Commission for Felony Indictment

(a) Upon indictment for a felony by a grand jury of this State or by a grand jury of the United States of any judge, the Commission shall, subject to subparagraph (b) of this Rule, review the indictment, and if it determines that the indictment relates to, and adversely affects the administration of the office of this indicted judge, and that the rights and interests of the public are adversely affected thereby, the Commission shall suspend the judge immediately and without further action pending the final disposition of the case or until the expiration of the judge's term of office, whichever occurs first. During the term of office to which such judge was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the judge shall be immediately reinstated to the office from which he or she was suspended. While a judge is suspended under this subparagraph and until final conviction, the judge shall continue to receive compensation. For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge. Upon a final conviction with no appeal or review pending, the office shall be declared vacant and a successor to that office shall be

chosen as provided in the Constitution of the State of Georgia of 1983 or the laws enacted in pursuance thereof.

(b) The Commission shall not review the indictment for a period of fourteen (14) days from the day the indictment is received. This period of time may be extended by the Commission. During this period of time, the indicted judge may, in writing, authorize the Commission to suspend him or her from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement or declaration of vacancy as are provided in this subparagraph for a nonvoluntary suspension.

(c) After any suspension is imposed under this subparagraph, the suspended judge may petition the Commission for a review. If the Commission determines that the judge should no longer be suspended, the judge shall immediately be reinstated to office.

(d) The findings and records of the Commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose. The finding and records of the Commission shall not be open to the public.

(e) The provisions of this subparagraph shall not apply to any indictment handed down prior to January 1, 1985.

(f) If a judge who is suspended from office under the provision of this subparagraph is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the judge shall be reinstated to office. The judge shall not be reinstated under this provision if he or she is not so tried based on a

continuance granted upon a motion made only by the defendant.

RULE 16

Petition to Modify or Reject Commission's Recommendation

(a) A petition to the Supreme Court to modify or reject the recommendation of the Commission for removal, other discipline or retirement of a judge may be filed with six (6) copies within thirty (30) days after service of a copy of the Commission's report on the judge. The petition shall be verified, shall be based on the record, shall specify grounds relied on, and shall be accompanied by proof of service of seven (7) copies of the petition and of the brief on the Commission. Within twenty (20) days after service of the petition and brief, the Commission may serve and file a responsive brief. Within fifteen (15) days after service of such brief, the petitioner may file a reply brief, seven (7) copies of which shall be served on the Commission.

(b) Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the Commission.

(c) A petition filed under this rule shall be heard in such manner as may be ordered by the Supreme Court.

RULE 17

Commission's Power to Secure Assistance

(a) In conducting investigations, the preparation of notices, presentation of evidence at a formal hearing,

preparation and filing briefs and other documents, or in otherwise carrying out its functions, the Commission may utilize the services of the Attorney General of this State or one of the Attorney General's deputies or assistants, and in addition thereto, or in lieu thereof, may secure and pay for the services of a member of the Bar of this State in any or all of such matters.

(b) The Commission may also employ such assistants as it considers necessary for the performance of the duties and in the exercise of the powers conferred upon the Commission; subpoena or arrange for and compensate medical or other experts and reporters; subpoena witnesses; and arrange for the attendance of witnesses not subject to subpoena; and pay from funds available to it all expenses reasonably necessary for effectuating the purposes of Article VI, §VII, ¶VII, of the 1983 Constitution of the State of Georgia.

RULE 18

Powers of Commission – Subpoenas, Depositions, Contempt, Physical Examinations, Witness Fees

(a) The Commission, through its Chairperson or Director, shall have the power to issue subpoenas for the attendance of witnesses at a formal hearing held before the Commission or a Special Master under Rule 7, for the production at such hearing of books, papers and other evidentiary matter.

(b) After notice is given to a judge that a formal hearing will be held under Rule 5, either the Commission or the judge may take the depositions of any witness upon

reasonable written notice thereof given to the judge or the Commission of the time and place of taking of such depositions. The original of the deposition shall be returned to the Commission and at the hearing may be opened and used by either party under the same conditions and in the same manner and for the same purposes as depositions in civil cases. In connection with the taking of such depositions, the Commission, through its Chairperson or Director, shall have the power to issue a subpoena for the attendance of the witness whose testimony is to be taken and for the production at the taking of the deposition of books, papers and other evidentiary matter.

(c) If any person refuses to attend, testify, or produce any writings or things required by a subpoena issued by the Commission, as authorized under subparagraph (b) of Rule 4 or under this rule, the Commission may petition the judge of the Superior Court of the circuit in which the person may be found, or if a judge of that circuit is involved in the proceedings, then to any judge of an adjoining circuit, for an order compelling the person to attend and testify or produce the writings or things required by the subpoena. The Court shall order the person to appear before it at a specified time and place and then and there shall consider why the person has not attended, testified or produced writings or things as required. A copy of said order shall be served upon the person to whom the subpoena of the Commission was directed. If it appears to the Court that the subpoena was regularly issued, the Court shall order the person to appear before the Commission, or a Special Master, at the time and place fixed in the order and to testify or produce the required writings or things. Failure to obey the order

shall be punishable as contempt of court. The proceedings so instituted shall state in general terms, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and directions, if any, of the Commission requesting an order requiring the person to appear and testify and to produce writings or things as required by the Commission's subpoena. If the proceedings are instituted prior to the giving of notice of a formal hearing, the proceedings shall not identify the judge by name but only as a number.

(d) Each witness shall receive for attendance the same fees and allowances prescribed by OCGA §24-10-24 for witnesses in civil cases.

(e) The Commission shall also have the authority after notice to the judge and a hearing to require that a judge involved in proceedings before the Commission submit to a physical or mental examination, or both, and specify the time, place, manner, conditions and scope of the examination and the physician or physicians by whom it is to be made.

RULE 19

Notices

(a) All notices provided for under these rules shall be in writing and shall be served upon the judge personally by a member of the Commission, or by a representative designated by the Chairperson, or may be served by registered or certified mail, return receipt requested.

(b) The initial notice sent to a judge with respect to an investigation to be or which has been conducted by the Commission shall be sent to the judge at such address as the Chairperson considers appropriate. Subsequent notices and mailed communications shall be sent to the judge at such address as he or she shall designate in writing filed with the Commission. If the judge is represented by counsel, all notices and papers to be sent to the judge under these rules may be served upon counsel.

(c) All notices mailed to a judge or counsel shall be enclosed in a sealed envelope marked on the face thereof," Confidential – to be opened by addressee only."

RULE 20

Confidentiality and Exceptions

(a) The proceedings of the Commission, including, but not limited to, complaints filed with the Commission, conferences of the Commission with respect to matters pending before it, minutes of actions and decisions of the commission, correspondence and other communications, and all other papers and documents shall be kept confidential. However, this confidentiality requirement shall not apply to notice of a formal hearing, a formal hearing, reports of the Commission to the Supreme Court recommending discipline, and decisions of the Commission made after a formal hearing that the judge with respect to whom the hearing was held was not guilty of misconduct justifying a recommendation of discipline. When, notwithstanding the rule of confidentiality set out in the first sentence of this subparagraph, the existence of a complaint filed with the Commission or any investigation of a

judge whether or not based upon a complaint shall in some way become public, the commission, at the request of the judge or upon its own motion if it considers such to be desirable, may make such statement with respect to the handling and status of the proceedings as the Commission may consider appropriate. When, in the exercise of its functions, the Commission has information concerning conduct of a member of the Bar which the Commission feels should be considered by the Disciplinary Board of The State Bar of Georgia for the purpose of determining whether such conduct constitutes a violation of the Code of Professional Responsibility, the Commission shall have the authority and it shall be its duty to refer the matter to the Board for such action as the Board may consider appropriate. The Commission shall be further authorized, in its discretion, to disclose to the Judicial Nominating Commission of the State of Georgia and to the Governor of the State, or any Commission, Board or Committee officially appointed to evaluate nominees for federal judgeships, including, but not limited to, a committee appointed by the American Bar Association for such purpose, any information involving any prospective nominee for judicial appointment which the Commission feels such Commission, Board or Committee should consider in passing upon the qualifications and fitness of the nominee for judicial appointment.

(b) All persons acting for the Commission in investigating a judge or participating in an official capacity in any proceedings relating thereto, including court reporters, shall be specifically advised by the Chairperson or by the Commission's representative of the requirement of confidentiality with respect to such matters as are confidential

under subparagraph (a) of this Rule and shall be directed not to disclose any information acquired by them to any person not officially or formally connected with the investigation or proceedings.

(c) All subpoenas and other proceedings which may be issued or conducted by the Commission prior to service of a notice of formal hearing shall not name the judge against whom the charges are pending, but shall style the proceedings by number as set out in Rule 5.

(d) If there shall be probable cause for inquiry concerning, or prosecution of, a witness for perjury in proceedings before the Commission, the record of the proceedings or papers filed in connection therewith shall be disclosed to the extent required by the inquiry or prosecution.

(e) A judge about whom an inquiry or investigation is being made may request release of information concerning the complaint and investigation, and the Commission, if it considers appropriate, may comply with such request.

(f) Any person violating the rule of confidentiality as set forth in this section shall be subject to punishment for contempt of the Supreme Court.

(g) The rule of confidentiality as set forth in this section shall not apply to any information which the Commission considers to be relevant to any current or future criminal prosecution against a judge, and upon receipt of a duly issued subpoena or court order by any state or federal court of record, the Commission is authorized to comply

with the same to the extent required by such subpoena or court order.

RULE 21

Immunity

Complaints, reports or testimony in the course of proceedings under these rules shall be deemed to be made in the course of judicial proceedings. Members of the Commission, Commission counsel and the Commission staff shall be absolutely immune from suit for all conduct in the course of their official duties. All other participants shall be entitled to all rights, privileges and immunities afforded to participants in actions filed in the courts of this state, and shall be immune from civil liability with respect to all papers filed with, or statements made or testimony given to, the Commission or the Supreme Court or given in any investigation or proceeding pertaining to a complaint against a judge, when done in good faith.

RULE 22

Advisory Opinions

The Commission shall be authorized to render advisory opinions concerning a proper interpretation of the Code of Judicial Conduct and to publish and disseminate the same. It shall be a complete defense to any complaint under these rules that the judge complained against has acted in accordance with and in reliance upon any such advisory opinion.

RULE 23

Other Powers

The Commission shall have such other powers and authority as may be reasonably necessary for the proper and efficient performance of its functions in carrying out the intent of the constitutional amendment creating the Commission.

RULE 24

Complaint Against a Member of the Supreme Court

A complaint against a member of the Supreme Court shall proceed in the same manner as a complaint against any other judge except:

(a) If the Commission recommends a sanction and the respondent consents to the sanction, the Commission shall impose the sanction and there shall be no appeal or further review by the Court.

(b) If the Commission recommends a sanction and the respondent objects to the sanction, the Commission shall proceed in the manner outlined in Rule 14. However, all current members of the Court shall be automatically disqualified and a substitute Court consisting of the current Chairperson and the six (6) immediate past Chairpersons of the Council of Superior Court Judges shall be impaneled to decide the matter in lieu of the sitting members of the Supreme Court. If any such Chairperson shall be disqualified or otherwise fails or refuses to serve, the next preceding Chairperson of the Council shall serve as a member of the substitute Court.

RULE 25

Emergency Interim Relief

(a) Incident to any preliminary investigation or formal proceeding conducted pursuant to these rules or upon receipt of sufficient evidence demonstrating that the continued service of any judge is causing immediate and substantial public harm and an erosion of public confidence in the orderly administration of justice and appears to be violative of the Georgia Code of Judicial Conduct, the Commission may petition the Supreme Court for injunctive or other relief, including temporary suspension or reassignment of the judge.

(b) The petition shall state the evidence justifying the emergency relief sought with particularity and shall be verified by the Chairperson and/or the Director of the Commission.

(c) Simultaneously with the filing of said petition, a copy shall be personally served upon the Respondent by any person approved by the Chairperson and/or the Director of the Commission. In the event personal service cannot be perfected, service may be perfected by registered or certified mail, return receipt requested, to the last known address of the Respondent as set forth in the most current issue of the *Georgia Courts Directory* published by the Administrative Office of the Courts.

(d) A written acknowledgement of service from the Respondent and/or his or her counsel shall constitute conclusive proof of service and eliminate the need to utilize any other form of service.

(e) Upon receipt of the verified petition for emergency relief, the Clerk of the Supreme Court shall immediately file the same; assign the matter a docket number; and notify the Chief Justice that the appointment of a Special Master is appropriate. Within 10 days after the docketing of said petition, the Court shall appoint a Special Master to conduct a hearing at which the Commission shall show cause why the relief sought by the Commission should be granted pending further disciplinary proceedings.

(f) Within 10 days after receipt of the Order of Appointment, the Special Master shall conduct a hearing at such time and place as may be designated by said Special Master or as may be mutually agreed upon by the parties.

(g) Within 10 days following the completion of said hearing, the Special Master shall file a report and recommendation with the Clerk of the Supreme Court and simultaneously serve copies thereof upon the Commission and the Respondent.

(h) The Supreme Court shall give expedited consideration to the report of the Special Master and may suspend the Respondent, with or without pay, pending final disposition of the disciplinary proceedings giving rise to the petition for emergency suspension or order such other action as it deems appropriate under all the circumstances.

RULE 26

Involuntary Retirement of Judges

In addition to other methods and causes provided in these Rules, a judge of any court in this State shall be

subject to involuntary retirement for a mental or physical disability which constitutes a serious and likely permanent interference with the performance of the duties of office on the following terms and conditions:

(a) Upon receiving a complaint or otherwise receiving information indicating that a Judge has been judicially declared incompetent; voluntarily committed by reason of incompetency or disability by a final judicial order after a judicial hearing; or may have a mental or physical disability that seriously impairs or interferes with the performance of the duties of office which is or is likely to become permanent, and after determining that said condition adversely affects the administration of the office of the disabled judge and the rights and interests of the public, the Commission shall, without further action, enter an order requiring the judge to show cause, within 10 days after service of said order, why said disabled judge should not be temporarily transferred to a disability inactive status pending the final disposition of the matter. A copy of said order shall be immediately served by hand delivery upon the judge, his or her guardian, or the director of the institution in which any such judge may be confined or otherwise receiving treatment.

Unless subsequently extended by consent, any such order shall automatically expire 90 calendar days after service upon the disabled judge, and during such time, said disabled judge shall continue to receive the compensation normally paid for such office.

(b) Simultaneously with the service of said order, the Commission shall request the judge to submit, within 10

days, all pertinent medical and other records to the Commission and shall designate one or more qualified medical, psychiatric or psychological experts to examine the disabled judge prior to any hearing on the matter. Said experts may or may not be agreed upon by the Commission and the disabled judge, but in any event, the written reports of all such experts shall be provided to the Commission and to the disabled judge as soon as medically feasible, and in any event, not less than 20 days prior to any hearing on the matter. The cost of any such examinations shall be borne solely by the Commission.

(c) The failure or refusal of a judge to submit the requested medical records or to submit to an independent medical examination, unless due to circumstances beyond the judge's control, shall preclude the judge from submitting reports of medical examinations done on his or her behalf, and the Commission may consider such failure or refusal as evidence that the judge has a disability.

(d) In the event the disabled judge shall desire independent medical examinations by experts other than those designated by the Commission, said judge shall have the absolute right to have such examinations conducted, provided, however, that any such examination shall be at the sole expense of the disabled judge and, provided further, that written reports of such examinations are provided to the Commission as soon as medically feasible and, in any event, not less than 20 days prior to any hearing on the matter.

(e) After receipt and review of the written reports of any and all such examinations and prior to any hearing on the matter, the Commission and the disabled judge

may agree upon a proposed stipulated disposition of the matter. Said proposed stipulated disposition, which shall contain, as appropriate, (i) findings of fact, conclusions of law and recommended final disposition; (ii) copies of the original complaint or other material giving rise to the complaint; and (iii) all written reports of examinations received and reviewed by the Commission, shall be immediately filed with the Supreme Court for approval, rejection or modification. In such filing, the disabled Judge shall not be identified, but the matter shall be captioned: "Stipulated Disposition Concerning Judge No. ___."

(f) The final decision on such stipulated disposition shall be made by the Supreme Court as soon as practicable, but in any event, not later than thirty (30) days after the matter is docketed in said Court, and the Court shall forthwith enter an appropriate order.

(g) In the event the proposed stipulated disposition is rejected and/or modified or revised in any substantial and material way, the disabled judge may, within ten (10) days of the receipt of the order of the Court, notify the Commission that he or she is withdrawing his or her agreement to the same, and said proposed stipulated disposition cannot thereafter be used against said disabled judge in any subsequent proceedings, nor shall the same be available for public inspection.

(h) If any such matter is not resolved by stipulated disposition, all such subsequent proceedings shall be conducted in the same manner as disciplinary proceedings, except:

(1) All such proceedings shall be and remain confidential until the final order of the Supreme Court;

(2) The Commission may appoint and compensate, if necessary, a lawyer to represent the disabled judge if the judge is without representation;

(3) If, after a formal hearing, the Commission concludes that the judge is incapacitated to continue to hold judicial office by reason of either or physical or mental disability, it shall not be empowered to recommend any disciplinary action against said judge, but rather shall be limited to recommending a suspension from office, either temporary or permanent, on such terms and conditions as may appear just and proper under the circumstances, until such time as an appropriate petition for reinstatement to active status has been filed by the disabled judge and granted by the Supreme Court.

(4) For the duration of any suspension under this subparagraph, the Governor shall appoint a replacement judge who shall serve until the disabled judge is reinstated to active status or until the expiration of the disabled judge's term of office, whichever first occurs.

Effective Date of Rules

Adopted by order January 24, 1994; effective March 1, 1994.

(Seal) **SUPREME COURT OF GEORGIA**

Atlanta, July 29, 1994

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

It is ordered that the Rules of the Judicial Qualifications Commission be amended by adding a new subsection (f) to Rule 2, as follows:

> (f) Notwithstanding the foregoing provisions, the Chairperson, with the concurrence of a majority of the Commission, may at any time designate any judicial member of the Commission to preside at any formal hearing held by the Commission. Any such designation shall be made by written order signed by the Chairperson or the Director.

(Seal) **SUPREME COURT OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

/s/ Sherie Welch, Clerk.

The Georgia Code of Judicial Conduct

Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and me ning of the Canons and Sections. The Commentary is not intended as a statement of additional rules.

When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as advisory and as a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible

discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law, as well as in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed for nor intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct

by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Terminology

Terms explained below are noted with an asterisk(*) in the Sections where they appear. In addition, the Sections where terms appear are referred to after the explanation of each term below.

"Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).

"Candidate." A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Sections 7A(1), 7A(2), 7B(1), 7B(2) and 7C.

"Comment" in connection with a case refers to valuative statements judging the professional wisdom of specific lawyering tactics or the legal correctness of particular court decisions. In contrast, it does not mean the giving

of generally informative explanations to describe litigation factors including: the prima facie legal elements of case types pending before the courts, legal concepts such as burden of proof and duty of persuasion or principles such as innocent until proven guilty and knowing waiver of constitutional rights, variable realities illustrated by hypothetical factual patterns of aggravating or mitigating conduct, procedural phases of unfolding lawsuits, the social policy goals behind the law subject to application in various cases, as well as competing theories about what the law should be. See Section 3B(9).

"Court personnel" does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(c) and 3B(9).

"De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Section 3E(1)(c).

"Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in

any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See Section 3E(2).

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian. See Sections 3E(2) and 5D.

"Invidious discrimination" is any action by an organization that characterizes some immutable individual trait such as a person's race, gender or national origin, as well as religion, as odious or as signifying inferiority, which therefore is used to justify arbitrary exclusion of persons possessing those traits from membership, position or participation in the organization. See Section 2C.

"Knowingly," "knowledge," "known" or **"knows"** denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D(1), 3D(2) and 3E(1).

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(7), 4A, 4B, 4C, 5C(4), 5F and 5G.

"Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Sections 3E(1)(c) and 5C(4).

"Non-public information" denotes information that, by law, is not available to the public. Non-public information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, pre-sentencing reports, dependency cases or psychiatric reports. See Section 3B(11).

"Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Section 7A(1).

"Public election." This term includes primary and general elections; it includes partisan elections, nonpartisan elections and may include (as context demands) retention elections. See Sections 7A(1), 7A(2), 7B(1), and 7B(2).

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3B(3), 3B(4), 3B(6), 3B(9) and 3C(2).

"Third degree of relationship." The following persons are relatives within the third degree of relationship:

great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1)(c).

CANON 1
Judges Shall Uphold the Integrity and Independence of the Judiciary.

An independent and honorable judiciary is indispensable to justice in our society. Judges shall participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe such standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Commentary: Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

Judges Shall Avoid Impropriety and the Appearance of Impropriety in All Their Activities.

A. Judges shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary: Public confidence in the judiciary is eroded by irresponsible or improper conduct of judges. Judges must avoid all impropriety and appearance of impropriety. Judges must expect to be the subject of constant public scrutiny. Judges must therefore accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen, and they should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

See also, Commentary under Section 2C.

B. Judges shall not allow their family, social, political or other relationships to influence their judicial conduct or judgment. Judges shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor should they convey or permit others to convey the impression that they are in a special position to influence them. Judges should not testify voluntarily as a character witness.

Commentary: Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 5C(4)(a) and Commentary.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or probation or corrections officer, but may provide to such person information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 7, regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness, because to do so may lend the prestige of the judicial office in support of a party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

C. Judges should not hold membership in any organization that practices invidious discrimination*.

Commentary: Membership by a judge in an organization that practices invidious discrimination may give rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization.

Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is in fact and effect an intimate, purely private organization, whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See *New York State Club Ass'n. Inc. v. City of New York*, 108 S. Ct. 2225. 101 L.Ed.2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d. 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d. 462 (1984). Ultimately, each judge must determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discrimination.

CANON 3

Judges Shall Perform the Duties of Judicial Office Impartially and Diligently.

A. Judicial Duties in General. The judicial duties of judges take precedence over all their other activities. Their judicial duties include all the duties of their office

prescribed by law*. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

(1) Judges shall hear and decide matters assigned to them, except those in which they are disqualified.

(2) Judges shall be faithful to the law* and maintain professional competence in it. Judges shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) Judges shall require* order and decorum in proceedings over which they preside.

(4) Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity, and shall require* similar conduct of lawyers, and of staff, court officials, and others subject to their direction and control.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and business-like while being patient and deliberate.

(5) Judges shall perform judicial duties without bias or prejudice. Judges shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socio-economic status, and shall not permit staff, court officials and others subject to judicial direction and control to do so.

Commentary: Judges must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to their direction and control.

Judges must perform judicial duties impartially and fairly. Judges who manifest bias on any basis in a proceeding impair the fairness of the proceeding and bring the judiciary into disrepute. Facial expression, body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. Judges must be alert to avoid behavior that may be perceived as prejudicial.

(6) Judges should require* lawyers in proceedings before the court to refrain from manifesting, by words and conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section, 3B(6), does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) Judges shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law*. Judges shall not initiate or consider ex parte communications, or consider other communications made to them outside the presence of the parties concerning a pending or impending proceeding, except that:

> (a) where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) Judges may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the court, if they give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.

(c) Judges may consult with court personnel* whose function is to aid them in carrying out their adjudicative responsibilities, or with other judges.

(d) Judges may, with the consent of the parties, confer separately with the parties or their lawyers in an effort to mediate or settle matters pending before the court.

(e) Judges may initiate or consider any ex parte communications when expressly authorized by law* to do so.

Commentary: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, judges must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. Judges must disclose to all parties all ex parte communications described in Section 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before them.

Judges must not independently investigate facts in a case and must consider only the evidence presented.

Judges may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

Judges must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on their staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication

or the substance of any oral communication should be provided to all parties.

(8) Judges shall dispose of all judicial matters fairly, promptly, and efficiently.

Commentary: In disposing of matters promptly, efficiently and fairly, judges must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. Judges should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. Judges should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by courts.

The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of matters fairly and with patience.

Commentary: Prompt disposition of the court's business requires judges to devote adequate time to their duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with them to that end.

(9) Judges shall not, while a proceeding is pending or impending in any court, make any public comment* that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. Judges shall require* similar abstention on the part of court personnel*

subject to their direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

Commentary: The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit judges from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where a judge is a litigant in an official capacity, the judge must not comment publicly.

(10) Judges shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Commentary: Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial.

(11) Judges shall not disclose or use, for any purpose unrelated to judicial duties, non-public information* acquired in a judicial capacity.

C. Administrative Responsibilities.

(1) Judges shall diligently discharge their administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) Judges shall require* their staffs, court officials and others subject to their direction and control to observe the standards of fidelity and diligence that apply to the judges and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) Judges with supervisory authority for judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) Judges shall not make unnecessary appointments. Judges shall exercise the power of appointment impartially and on the basis of merit. Judges shall avoid nepotism and favoritism. Judges shall not approve compensation of appointees beyond the fair value of services rendered.

Commentary: Appointees of judges include assigned counsel, officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(4).

D. Disciplinary Responsibilities

(1) Judges who receive information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. Judges having knowledge* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.*

(2) Judges who receive information indicating a substantial likelihood that a lawyer has committed a

violation of the Standards of Conduct of the State Bar of Georgia should take appropriate action. Judges having knowledge* that a lawyer has committed a violation of the Standards of Conduct of the State Bar of Georgia that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.*

(3) Acts of judges, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of their judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against these judges.

Commentary: Appropriate action may include direct communication with the judge or lawyer who has committed the violation, or other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

Section 3D(1) requires judges to inform the Judicial Qualifications Commission of any other judge's violation of the Code of Judicial Conduct, if the violation raises a substantial question of fitness for office and if the violation is actually known to the reporting judge.

Section 3D(2) also requires judges to report to the State Bar of Georgia any violation by a lawyer of the Standards of Conduct, if the violation raises a substantial question of the lawyer's fitness as a lawyer and, again, if the violation is actually known to the reporting judge.

E. Disqualification.

(1) Judges shall disqualify themselves in any proceeding in which their impartiality might reasonably

be questioned, including but not limited to instances where:

Commentary: Under this rule, judges are subject to disqualification whenever their impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

Judges should disclose on the record information that the court believes the parties or their lawyers might consider relevant to the question of disqualification, even if they believe there is no legal basis for disqualification.

The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as possible.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding.

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or

the judge has been a material witness concerning it;

Commentary: A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); judges formerly employed by a governmental agency, however, should disqualify themselves in a proceeding if their impartiality might reasonably be questioned because of such association.

(c) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such person, or any other member of the judge's family residing in the judge's household*:

i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Section 3E(1), or that the relative is known by the judge to have an

interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(c)(iii) requires the judge's disqualification.

(2) Judges shall keep informed about their personal and fiduciary* economic interests*, and make a reasonable effort to keep informed about the personal financial interests of their spouses and minor children residing in their households.

F. Remittal of Disqualification. Judges disqualified by the terms of Section 3E may disclose on the record the basis of their disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Commentary: A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently to the court, judges must not solicit, seek or hear comment on possible remittal or waiver of the disqualification, unless the lawyers jointly propose remittal after consultation as provided in Section 3F. A party may act through counsel, if counsel represents on the record that the party has been consulted and consents. As a practical matter, judges may

wish to have all parties and their lawyers sign a remittal agreement.

CANON 4

Judges May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice.

Judges, subject to the proper performance of their judicial duties, may not engage in the following quasi-judicial activities, if in so doing they cast doubt on their capacity to decide impartially any issue that may come before them;

A. Judges may speak, write, lecture, teach, and participate in other activities concerning the law*, the legal system, and the administration of justice.

B. Judges may appear at public hearings before an executive or legislative body or official on matters concerning the law*, the legal system, and the administration of justice, and they may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. Judges may serve as members, officers, or directors of an organization or governmental agency devoted to the improvement of the law*, the legal system, or the administration of justice. They may assist such organizations in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. They may

make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, judges are encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Non quasi-judicial, or non law-related, extra-judicial activities are governed by Canon 5.

CANON 5

Judges Should Regulate Their Extra-Judicial Activities to Minimize the Risk of Conflict with their Judicial Duties.

A. Avocational Activities. Judges may not engage in such avocational activities as detract from the dignity of their office or interfere with the performance of their judicial duties.

Commentary: Complete separation of judges from extra-judicial activities is neither possible nor wise; they should not become isolated from the society in which they live.

B Civic and Charitable Activities. Judges may not participate in civic and charitable activities that reflect adversely upon their impartiality or interfere with the

performance of their judicial duties. Judges may serve as officers, directors, trustees, or non-legal advisors of educational, religious, charitable, fraternal, or civic organizations not conducted for the economic or political advantage of their members, subject to the following limitations:

(1) Judges should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before them or will be regularly engaged in adversary proceedings in any court.

Commentary: The changing nature of some organizations and of their relationship to the law makes it necessary for judges regularly to re-examine the activities of each organization with which they are affiliated to determine if it is proper for them to continue their relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(2) Judges should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of their office for that purpose, but they may be listed as officers, directors, or trustees of such organizations. A judge should not be a speaker or the guest of honor at an organization's fund-raising event, but may attend such events.

(3) Judges should not give investment advice to such an organization, but they may serve on

its board of directors or trustees even though it has the responsibility for approving investment decisions.

Commentary: A judge's participation in an organization devoted to quasi-judicial, or law-related, extra-judicial activities is governed by Canon 4.

C. Financial Activities.

(1) Judges should refrain from financial and business dealings with lawyers, litigants, and others that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, or exploit their judicial positions.

(2) Subject to the requirement of subsection (1), judges may hold and manage investments, including real estate and engage in other remunerative activity including the operation of a business.

(3) Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified. As soon as they can do so without serious financial detriment they should divest themselves of investments and other financial interests that might require frequent disqualification.

(4) Neither judges nor members of their families residing in their households* should accept a substantial gift, bequest, favor, or loan from anyone except as follows:

(a) judges may accept gifts incident to a public testimonial to them; books supplied by publishers on a complimentary basis for official use; or invitations to judges and their spouses to

attend bar-related functions or activities devoted to the improvement of the law*, the legal system, or the administration of justice;

(b) judges or members of their families residing in their households may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges, or a scholarship or fellowship awarded on the same terms applied to other applicants.

(c) judges or members of their families residing in their households may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before them, and if its value exceeds $100, the judges report it in the same manner as they report compensation in Canon 6C.

Commentary: This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

(5) Judges are not required by this Code to disclose their income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

Commentary: Canon 3 requires judges to disqualify themselves in any proceeding in which they have a financial interest; Canon 5 requires judges to refrain from financial activities that might interfere with the impartial performance of their judicial duties; Canon 6 requires them to report all compensation they receive for activities involving personal services outside their judicial office.

Judges have the rights of an ordinary citizen, including the right to privacy in their financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of their duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(6) Information acquired by judges in their judicial capacity should not be used or disclosed by them in financial dealings or for any other purpose not related to their judicial duties.

D. Fiduciary* Activities. Judges should not serve as executors, administrators, trustees, guardians, or other fiduciaries, except for the estates, trusts, or persons of members of their families and then only if such service will not interfere with the proper performance of their judicial duties. "Member of their families" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As family fiduciaries, judges are subject to the following restrictions:

(1) They should not serve if it is likely that as fiduciaries, they will be engaged in proceedings that would ordinarily come before them, or if the estates, trusts, or wards become involved in adversary proceedings in the court on which they serve or one under its appellate jurisdiction.

(2) While acting as fiduciaries, judges are subject to the same restrictions on financial activities that apply to them in their personal capacities.

Commentary: Judges' obligations under this Canon and their obligations as fiduciaries may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

E. Arbitration. Judges should not act as arbitrators or mediators for compensation. This prohibition does not apply to senior judges who serve as judges.

F. Practice of Law. Judges should not practice law, unless allowed by law.*

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law*, the legal system, or the administration of justice, if acceptance of such appointment might reasonably cast doubt upon the judge's impartiality or demean the judge's office.

Commentary: Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

CANON 6

Judges Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities.

Judges may not receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments gives the appearance of influencing the judge in his judicial duties or otherwise gives the appearance of impropriety. Such compensation is subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging and other necessary expense reasonably incurred by the judge and, where appropriate to the occasion, by their spouses. Any payment in excess of such an amount is compensation.

C. Reports. Except as hereinafter provided to the contrary, full time judges should report the dates, places, and nature of any activities involving personal services for which they received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. Judges' reports for each calendar year should be filed between January first and April fifteenth of the following year in the office of the Clerk of the Supreme Court of Georgia. A copy of a

judge's federal income tax return shall be considered a sufficient compliance with this paragraph. Such report or tax return shall be filed under seal and shall be available for inspection only by the Justices of the Supreme Court of Georgia and the members of the Judicial Qualifications Commission.

CANON 7

Judges Should Refrain from Political Activity Inappropriate to Their Judicial Office

A. Political Conduct in General.

(1) A judge or a candidate* for public election* to judicial office should not:

(a) act as a leader or hold any office in a political organization*;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

Commentary: A candidate does not publicly endorse another candidate for public office by having his name on the same ticket.

(c) solicit funds for or pay an assessment or make a contribution to a political organization, or purchase ticket for political party dinners, or other functions, except as authorized in subsection A(2).

(2) Judges holding an office filled by public election* between competing candidates*, or candidates for such office, may attend political gatherings and speak to such gatherings on their own behalf when they are candidates for election or re-election.

B. Campaign Conduct

(1) Candidates*, including an incumbent judge, for a judicial office that is filled either by public election* between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office;

(b) should prohibit officials or employees subject to their direction or control from doing for them what they are prohibited from doing under this Canon; and except to the extent authorized under subsection B(2), they should not allow any other person to do for them what they are prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce their views on disputed legal or political issues; or misrepresent their identities, qualifications, present positions, or other facts.

(2) Candidates*, including an incumbent judge, for a judicial office that is filled by public election* between competing candidates should not themselves solicit campaign funds, or solicit publicly stated support, or be present at a function while solicitations of campaign funds on their behalf are conducted, but they may establish committees of responsible persons to secure and manage the expenditure of funds for their campaigns and to obtain public statements of support for their candidacies. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers.

Candidates, including incumbent judges, should not use or permit the use of campaign contributions for the private benefit of themselves or members of their families.

C. Applicability. Canon 7 generally applies to all incumbent judges and judicial candidates*. A successful candidate whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to [Rule 8.2(b) of the ABA Model Rules of Professional Conduct].

Application of the Code of Judicial Conduct

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as an administrative law judge of an executive branch agency or of the Board of Workers Compensation, an associate judge, a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges shall comply with this Code except as provided below.

A. Part-time Judges. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. Part-time judges:

(1) are not required to comply with Canon 5D [fiduciary activities], 5E [arbitration], 5F [practice of law], and 5G [extra-judicial appointments], and are not required to comply with Canon 6C [annual financial reporting].

(2) should not practice law in the court on which they serve, or in any court subject to the appellate jurisdiction of the court on which they serve, or act as lawyers in proceedings in which they have served as judges or in any other proceeding related thereto.

B. Judge Pro Tempore. A judge pro tempore is a person who is appointed to act temporarily as a judge.

(1) While acting as such a judge pro tempore is not required to comply with Canon 5C(3) [financial activities], 5D [fiduciary activities], 5E [arbitration and mediation], 5F [practice of law], and 5G [extra judicial appointments], and Canon 6C [annual financial reporting].

(2) Persons who have been judges pro tempore should not act as lawyers in proceedings in which they have served as judges or in other proceedings related thereto.

C. Time for Compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 5C(1), 5C(2), 5C(3) [personal and family financial activities] and 5D [fiduciary activities], and shall comply with these Sections as soon as reasonably possible and shall do so in any event within the period of one year.

Commentary: If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 5D, continue to serve, but only for that period

of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship, and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 5C(1), 5C(2) and 5C(3), continue in that activity for a reasonable period, but in no event longer than one year.

Effective Date of Code

This Code shall become effective January 1, 1994.

BEFORE THE COMMISSION
ON JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE #94-70

NOTICE OF FORMAL PROCEEDINGS

This is to notify you that the Judicial Qualifications Commission has concluded that formal proceedings should be instituted for the purpose of determining whether you committed the acts enumerated below and, if so, whether you were guilty of willful misconduct in office or conduct prejudicial to the administration of justice which brings the judicial office into disrepute:

I.

Whether you have failed to operate and conduct the business of the Magistrate Court of Peach County, Georgia in the manner required by the Code of Judicial Conduct by failing to personally observe the high standards of conduct required to preserve and uphold the integrity of the judiciary and by wrongfully using the power and prestige of your office to benefit your own personal and political interests in, but not limited to, the following instances:

A. issuing fifty-six (56) sets of five (5) identical unwarranted and unnecessary Orders to each and every employee of the Sheriff's Department of Peach County and thereafter issuing contempt citations against certain of said employees, as well as the County Coroner, for failing to serve said Orders.

B. engaging in a well-publicized and ongoing dispute with the governing authorities of Peach County,

Georgia which culminated in your preparing and causing to be issued, by a judicial officer outside the judicial circuit in which your court is located, felony warrants for each and every member of the Peach County Commission by reason of your personal bias and animosity toward said Commissioners.

C. publicly responding to the decision of a specially appointed and completely independent prosecutor to dismiss said warrants by issuing an official public statement to the media which repeats earlier accusations and criticisms of the Peach County Commission and seeks to justify the numerous improper and unwarranted actions taken by you in your ongoing personal dispute with said Commission.

D. unilaterally and arbitrarily reducing the fees normally charged in the Magistrate Court for the purpose of reducing the income flowing to Peach County from said Court and thereby "get even" with the Peach County Commission for its failure to support you in your ongoing dispute with the Sheriff's Department.

E. repeatedly making unwarranted, unreasonable and unnecessary demands upon various county officials for records, information, and/or services which were totally unrelated to the operation of your court and/or were easily accessible to you or any other member of the public.

F. improperly closing the office of the Magistrate Court for a period of three (3) consecutive days and placing the employees of said court on paid leave, while leaving only your eighteen (18) year-old daughter attending said office.

II.

Whether you engaged in ex parte communications with one of the parties to a matter litigated in your court and thereafter reversed an earlier decision without notice to or an opportunity to be heard by the opposite party, resulting in additional unnecessary litigation in the Superior Court of Peach County and the waste of additional judicial resources.

III.

Whether such conduct, or any of it, has created widespread and adverse publicity which has caused the judiciary in general, and the Magistrate Court of Peach County in particular, to be subjected to criticism and ridicule and be held in disrepute by members of the public in general, as well as by numerous citizens of Peach County, Georgia.

IV.

Whether such conduct, or any of it, constitutes irresponsible or improper activity which adversely affects the administration of your office, as well as the rights and interests of the public.

V.

Whether such conduct, or any of it, has resulted in the filing of numerous complaints with this Commission concerning the embarrassment, humiliation, and dismay experienced by numerous citizens of Peach County, Georgia as a result of your continuing attempts to advance

your personal, private and political interests by intimidating and otherwise coercing similarly elected public officials through the arrogant, arbitrary and capricious abuse and/or misuse of the powers of your office.

VI.

Whether such conduct, or any of it, constitutes a violation of the Code of Judicial Conduct, and Canons 1, 2, and 3 thereof in particular, for which you should be appropriately sanctioned.

This 31st day of March, 1994.

JUDICIAL QUALIFICATIONS COMMISSION

By: /s/ John E. James
John E. James, Chair

ATTEST:

/s/ Earle B. May, Jr.
Earle B. May, Jr.
Director

IN THE SUPREME COURT
FOR THE STATE OF GEORGIA

IN RE: INQUIRY CONCERNING A JUDGE
NO. 94-70

DOCKET NO. _____

RESPONSE OF THE JUDICIAL QUALIFICATIONS COMMISSION IN OPPOSITION TO EMERGENCY MOTION [FOR] A CONTINUANCE OF PRETRIAL CONFERENCE AND HEARING BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION

(Filed Sep. 23, 1994)

COMES NOW the Judicial Qualifications Commission and opposes Respondent's motion for a continuance. The Judicial Qualifications Commission shows the following facts:[1]

1. The Answer to Notice of Formal Proceedings in this matter was filed on May 4, 1994.

2. On April 22, 1994, John E. James, Chairman of the Judicial Qualifications Commission, appointed Judge Hugh Lawson to preside in this matter. (Attachment A)

3. The deposition of Judge O'Neal was noticed, on May 9, for May 19, 1994. (Attachment B) Because Mr. Harvey, counsel for Judge O'Neal, presented scheduling

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[1] Because of the limited time within which the Judicial Qualifications Commission must respond to the motion for continuance, in order for this Court to rule before the prehearing conference scheduled for 10:00 a.m. on September 27, the undersigned counsel states in her place certain facts which would otherwise be supported by affidavits. Affidavits will be provided at a later date should this Court request them.

conflicts (Attachment C), the deposition was renoticed for July 26, 1994. (Attachment D) On July 25, Judge O'Neal notified Mr. Harvey, who notified the undersigned, that she had laryngitis and would not be available for the deposition. The undersigned requested a medical excuse. Instead, Judge O'Neal faxed her own affidavit. (Attachment E, Exhibit 1) Judge O'Neal gave her deposition on August 1.

4. On August 11, 1994, Judge Lawson wrote to counsel, informing them that the hearing would not take place in August because of Mr. Harvey's involvement in a death penalty trial, but that it would go forward on September 29. The letter included a pretrial order form and scheduled a prehearing conference for September 26. (Attachment F) On August 18, Earle May wrote to counsel to change the date of the prehearing conference to September 27. (Attachment G)

5. Earle May sent a reminder letter to counsel on September 7. (Attachment H)

6. On September 14, 1994, the undersigned served a notice for the deposition of a witness to be used at the hearing. (Attachment I)

7. On September 20, the undersigned received a letter which Mr. Harvey mailed on September 19, informing her that he could not attend the deposition because he would be in a death penalty trial for another two weeks. No copy of that letter was sent to Mr. May or Judge Lawson. (Attachment J) The undersigned called Mr. Harvey's office to inform him that the deposition was canceled (for unrelated reasons) and was told that he would be on trial through the week of September 26. This

was the first notice the undersigned had received of any potential conflict for that week.

8. The undersigned immediately called Mr. May to inform him of the apparent conflict and learned that Mr. May had not received such information. Mr. May informed the undersigned that he would call Judge Lawson. *Neither man had been informed of Mr. Harvey's conflict before the undersigned called Mr. May on September 20.*

9. Judge Lawson then called Mr. Harvey; he restated his conversation with Mr. Harvey in his letter to Mr. Harvey of September 20, 1994. (Attachment K)

10. Nine depositions have been taken in this case. Mr. Harvey was present at the deposition of Judge O'Neal and took two depositions. Pete Whitlock of Mr. Harvey's office was present at one deposition. Michael Hauptman took the one deposition and was present at four depositions.

11. In spite of Mr. Harvey's protest about the 166 documents to be offered by the Judicial Qualifications Commission at the hearing, the vast majority of those documents were generated by Mr. Harvey's client. Mr. Harvey has adopted those very documents on behalf of his client for use at the hearing. (Attachment L)

12. At the hearing on this matter, counsel for the Judicial Qualifications Commission will present evidence that some of the wrongful conduct with which the judge has been charged is still continuing. Postponing the hearing is not therefore in the interest of the citizens of the county in which she serves.

13. As Mr. Harvey has stated, in the motion for a continuance, he will be unavailable in October because of a trial specially set before Judge Tidwell in U.S. District Court.

14. The undersigned has served a copy of this Response upon all interested parties.

WHEREFORE, the Judicial Qualification Commission respectfully prays this Court to DENY Respondent's motion for a continuance.

Respectfully submitted,

/s/ Mary Ann B. Oakley
MARY ANN B. OAKLEY
315 W. Ponce de Leon Avenue
Suite 721
Decatur, Georgia 30030-2441
(404) 378-5111
Georgia Bar No. 548187

ATTORNEY FOR THE JUDICIAL QUALIFICATIONS COMMISSION

ATTACHMENT A

BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE #94-70

ORDER

Judge Hugh Lawson, a member of this commission is hereby appointed to preside in the above matter. All

parties and their counsel are directed to file copies of all pleadings with the commission director and the presiding Judge. The presiding Judge shall rule on all questions in this matter.

SO ORDERED this 22nd day of April, 1994

/s/ John E. James
John E. James
Chairman

ATTACHMENT B

BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE #94-70

NOTICE OF DEPOSITION

TO: Bruce S. Harvey, Esq.
135 Nassau Street, N.W.
Atlanta, Georgia 30303

PLEASE TAKE NOTICE that, pursuant to the provisions of the Georgia Civil Practice Act, the undersigned will take the deposition of Judge Linda O'Neal on Thursday, May 19, 1994, beginning at 10:30 a.m. and continuing until completed. The deposition will be taken at the office of Mary Ann B. Oakley, 133 Carnegie Way, Suite 508, Atlanta, Georgia 30303.

The deposition shall be taken upon oral examination before a Notary Public or some other person duly authorized to administer the oath according to the laws of the State of Georgia.

/s/ Mary Ann B. Oakley
MARY ANN B. OAKLEY
Suite 508, Carnegie Building
133 Carnegie Way
Atlanta, Georgia 30303
(404) 223-5250
Georgia Bar No. 548187

COUNSEL FOR THE COMMISSION
ON JUDICIAL QUALIFICATIONS

ATTACHMENT C

LAW OFFICES OF
BRUCE S. HARVEY

May 18, 1994

CONFIDENTIAL – TO BE OPENED
BY ADDRESSEE ONLY

Honorable Hugh Lawson, Chief Judge
Oconee Judicial Circuit
P.O. Box 269
Hawkinsville, Georgia 31036-0269

RE: Judicial Qualifications Commission
Inquiry Concerning a Judge #94-70

Dear Judge Lawson:

Please allow this letter to confirm our telephone conversation regarding a continuance of the depositions which were scheduled for Thursday, May 19, 1994. It is my understanding that these depositions will be continued until a further date due to a scheduling conflict.

Please be advised that I have the following scheduling conflicts for the end of May and the month of June, 1994:

1. *United States v Charles Pipkins*, begins trial in the United States District Court, Atlanta, on May 23, 1994, and will last approximately one week.

2. *United States v Jack Coburn, et al.*, is scheduled to begin trial in the United States District Court in Grand Rapids, Michigan on May 31, 1994, and will last at least one week.

3. *State of Georgia v Kesserling*, in the Superior Court of Cobb County, is scheduled to begin trial on June 7, 1994, and will last at least three week. This is a case in which the State is seeking the death penalty.

4. *State of Georgia v Harris*, is a murder case which is set to begin trial in the Superior Court of Fulton County on June 20, 1994.

In addition to these main trials, I have several hearings in other cases during May and June. Based upon

this, I am requesting that further action in this case will be placed on hold until after June, 1994.

Thank you.

Best regards,

/s/ Bruce S. Harvey
Bruce S. Harvey
Attorney at Law

BSH/jg

cc: Mary Ann B. Oakley, Esquire

ATTACHMENT D

BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE #94-70

NOTICE OF DEPOSITION

TO: Bruce S. Harvey, Esq.
135 Nassau Street, N.W.
Atlanta, Georgia 30303

PLEASE TAKE NOTICE that, pursuant to the provisions of the Georgia Civil Practice Act, the undersigned will take the deposition of Judge Linda O'Neal on Tuesday, July 26, 1994, beginning at 1:30 p.m. and continuing until completed. The deposition will be taken at the office of Mary Ann B. Oakley, 133 Carnegie Way, Suite 508, Atlanta, Georgia 30303, or at such other place as counsel may agree.

The deposition shall be taken upon oral examination before a Notary Public or some other person duly authorized to administer the oath according to the laws of the State of Georgia.

/s/ Mary Ann B. Oakley
MARY ANN B. OAKLEY
Suite 508, Carnegie Building
133 Carnegie Way
Atlanta, Georgia 30303
(404) 223-5250
Georgia Bar No. 548187

COUNSEL FOR THE COMMISSION
ON JUDICIAL QUALIFICATIONS

ATTACHMENT E

BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE	No. 94-70

Remarks made at the scheduled deposition of **LINDA O'NEAL**, commencing at 1:30 p.m. on July 26, 1994, at 508 Carnegie Building, 133 Carnegie Way, N.W., Atlanta, Fulton County, Georgia, 30303, before Clifford C. Sheffield, III, Certified Court Reporter.

SHEFFIELD REPORTING SERVICE
CERTIFIED COURT REPORTERS
2869 ARDEN ROAD, N.W.
ATLANTA, GEORGIA 30327
(404) 352-1779

APPEARANCES

MARY ANN B. OAKLEY, Esquire
508 Carnegie Building
133 Carnegie Way, N.W.
Atlanta, Georgia 30303

BRUCE STEVEN HARVEY, Esquire
135 Nassau Street, N.W.
Atlanta, Georgia 30303-2009

EXHIBITS

exhibit 1 marked at page 4

PROCEEDINGS

[p.4] **MS. OAKLEY:** This was to have been the deposition of Judge Linda O'Neal. Judge O'Neal informed her attorney, Mr. Harvey, yesterday that she was suffering from laryngitis and would be unable to attend the deposition today. Mr. Harvey at that point asked her to provide a doctor's excuse. She has provided the affidavit which we will mark and attach as exhibit 1, and has not provided a doctor's excuse. Is that correct?

MR. HARVEY: That's correct. And I'm Bruce Harvey, for the record, representing Judge O'Neal, or – I don't know how we do it in this – the Judge in Inquiry, 94-70. You've got the style, correct?

MS. OAKLEY: Yes.

THE REPORTER: Yes.

MR. HARVEY: Okay. And we would rely upon that affidavit, which will [p. 5] be appended to the record. And we will also state that we are ready to reschedule the deposition at the earliest possible time, in the convenience of the parties.

MS. OAKLEY: Off the record.

(Discussion off the record.)

MS. OAKLEY: Judge O'Neal is not present. Off the record now.

(Discussion off the record.)

(Document was then marked as exhibit 1 for identification.)

(remarks concluded.)

EXHIBIT 1

7-26-94 US

IN THE MAGISTRATE COURT OF PEACH COUNTY
STATE OF GEORGIA

AFFIDAVIT

STATE OF GEORGIA
COUNTY OF PEACH

Personally before the undersigned officer authorized to administer oaths appeared Judge Linda O'Neal who does state on oath the following:

1. That affiant has personal knowledge of the facts contained in this affidavit which pertains to the above-styled matter.

2. On July 25, 1994, affiant became ill with acute laryngitis.

3. On July 26, 1994, affiant's illness was serious enough to require bed rest.

/s/ Linda O'Neal
AFFIANT

Sworn to and subscribed before me this 26th day of July, 1994.

Notary Public, Peach County, Georgia.
My Commission Expires August 2, 1997.
/s/ William Cooney
Notary Public

ATTACHMENT F

[seal]

SUPERIOR COURTS
EIGHTH JUDICIAL ADMINISTRATIVE DISTRICT
OCONEE JUDICIAL CIRCUIT

Bleckley, Dodge, Montgomery, Pulaski,
Telfair & Wheeler Counties

HUGH LAWSON,
CHIEF JUDGE
PULASKI COUNTY
COURTHOUSE
P.O. BOX 269
HAWKINSVILLE,
GEORGIA 31036
PHONE 912-783-1696

PHILLIP R. WEST, JUDGE
DODGE COUNTY
COURTHOUSE
P.O. BOX 571
EASTMAN, GEORGIA
31023
PHONE 912-374-7731

August 11, 1994

Mr. Bruce S. Harvey
Attorney at Law
135 Nassau Street, N.W.
Atlanta, Georgia 30303

RE: Judge Linda O'Neal

Dear Mr. Harvey:

After talking with Mary Ann Oakley yesterday, and being unable to reach you by phone because of your trial conflict, I am writing to give you my idea of how this matter will progress.

I understand that the taking of depositions in this case, and your present involvement in the trial of a death penalty case in Cobb County will prevent a hearing in this case in August. However, I do not think this case should be continued again and it is now scheduled for

trial in September beginning at 9:00 a.m. on Thursday, September 29.

I am handing to you and Ms. Oakley herewith a pre-trial order which is self-explanatory. I am asking Earle May to find a convenient place in Atlanta for a pre-trial conference and he will advise us of that location as soon as it is determined.

If either you or Ms. Oakley have any questions I will be glad to hear from you.

Very truly yours,

/s/ Hugh Lawson
Hugh Lawson

HL/nbp
enclosure
cc: (w/enclosure)
Ms. Mary Ann B. Oakley✓
Mr. Earle B. May, Jr.

THE JUDICIAL QUALIFICATIONS
COMMISSION OF GEORGIA

IN RE: INQUIRY CONCERNING :
CHIEF MAGISTRATE : NO. 94-70
LINDA O'NEAL :

ORDER

This matter will be heard by the Commission beginning at 9:00 a.m. on September 29, 1994, in the courtroom

of the Supreme Court of Georgia, 6th Floor, State Judicial Building, Atlanta, Georgia.

Counsel for the Commission and for Chief Magistrate O'Neal, shall furnish to the undersigned, with copies to each other and to Director Earle May, not later than September 16, 1994, the following:

(a) a statement of the factual basis for each charge made against Chief Magistrate O'Neal and for Chief Magistrate O'Neal's defense to each charge;

(b) a statement of the issues formed by the charges and defenses;

(c) a list of the witnesses each attorney expects to call at the hearing, with a brief summary of the expected testimony of each witness;

(d) a list of the documentary evidence each attorney expects to offer, with a brief summary of the content of each document; and

(e) an estimate of the time required to present each side of the matter.

Unless written objections are filed before September 26, 1994, the Commission will consider counsel to have stipulated and agreed as to the authenticity of the listed documentary evidence which may be admitted into evidence without further proof of authenticity; however, all other objections to documentary evidence are reserved until the hearing. Any objections to testimony and/or exhibits in any deposition must be made in writing before September 26, 1994, after which the Commission will not consider any such objections.

Counsel are ordered to meet with the undersigned and Director Earle May at 9:00 a.m. on September 26, 1994, at a location to be announced, for a pre-hearing conference to consider the simplification and narrowing of the issues; the possibility of obtaining admission of facts and documents which will avoid unnecessary proof; the limitation of the number of witnesses; and any other matter which may aid in the disposition of this case.

SO ORDERED, this the 11th day of August, 1994.

/s/ Hugh Lawson
HUGH LAWSON
DESIGNATED PRESIDING
JUDGE

ATTACHMENT G

JUDICIAL QUALIFICATIONS COMMISSION
SUITE 206
77 EAST CROSSVILLE ROAD
ROSWELL, GEORGIA 30075-3085
(404) 587-5208
FAX: (404) 587-5422

August 18, 1994

[Names Omitted In Printing]

Confidential – To Be Opened By Addressee Only

Mary Ann B. Oakley
Attorney at Law
Suite 508
133 Carnegie Way, N.W.
Atlanta, GA 30303

Bruce S. Harvey
Attorney at Law
135 Nassau Street, NW
Atlanta, GA 30303

Re: Judge Linda O'Neal
Docket No. 94-70

Dear Counsel:

Subsequent to Judge Hugh Lawson's letter of August 11, 1994, we have discovered that both he and I are scheduled to participate in a seminar for Municipal Court Judges on September 26, 1994. For this reason, it is necessary to change the scheduled pre-trial conference to Tuesday, September 27, 1994, at 10:00 a.m. This conference will be held in the Conference Room of the Office of Bar Admissions on the 6th Floor of the State Health Building at 47 Trinity Avenue in Atlanta and a court reporter will be present.

We look forward to seeing both of you, and in the meantime, will expect to receive the documents set forth in Judge Lawson's order of August 11, 1994 on or before September 16, 1994. In addition, please submit all requests for trial subpoenas with complete names and addresses to this office no later than September 16, 1994.

With best regards to each of you, I am

Sincerely,

/s/ Earle B. May, Jr.
Earle B. May, Jr.
Director

EBM:mma

cc: Members of the Commission (w/enclosures)

ATTACHMENT H

JUDICIAL QUALIFICATIONS COMMISSION
SUITE 206
77 EAST CROSSVILLE ROAD
ROSWELL, GEORGIA 30075-3085
(404) 587-5208
FAX: (404) 587-5422

September 7, 1994

[Names Omitted In Printing]

Confidential – To Be Opened By Addressee Only

Mary Ann B. Oakley
Attorney at Law
Suite 721
315 W. Ponce de Leon Avenue
Decatur, GA 30030-2441

Bruce S. Harvey
Attorney at Law
135 Nassau Street, NW
Atlanta, GA 30303

Re: Judge Linda O'Neal
Docket No. 94-70

Dear Counsel:

This will serve to remind you that the following documents are due in this office no later than Friday, September 16, 1994:

1. Requests for trial subpoenas with complete names and addresses; and

2. All items set forth in paragraphs (a) – (e) of Judge Lawson's Order dated August 11, 1994 (mailed to each of you on the same date).

For your information, no one will be in the office that day, but mailed documents hopefully will be delivered on the following Monday. If possible, we would like the documents on Thursday, September 15.

Please also remember the Pre-trial Conference currently scheduled for Tuesday, September 27, 1994, at 10:00 a.m. A court reporter will be present for the Pre-trial.

I will be out of the office from September 14 – September 18, but our administrative assistant, Mary Anderson, will be available to assist either of you should the need arise.

With best regards, I am

Sincerely,

/s/ Earle B. May, Jr.
Earle B. May, Jr.
Director

EBM:mma
cc: Judge Hugh Lawson

ATTACHMENT I

BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE NO. 94-70

NOTICE OF DEPOSITION

TO: Bruce S. Harvey, Esq.
135 Nassau Street, N.W.
Atlanta, Georgia 30303

PLEASE TAKE NOTICE that, pursuant to the provisions of the Georgia Civil Practice Act and O.C.G.A. Title 24, the undersigned will take the deposition of Ricky E. Jones for use as evidence at hearing on this action, on Monday, September 26, 1994, at 10:00 a.m., at Mr. Jones' law office, 1017 N. Houston Street, Warner Robins, Georgia 31093-1505.

The deposition shall be taken upon oral examination before a Notary Public or some other person duly authorized to administer the oath according to the laws of the State of Georgia. You are invited to attend and cross-examine.

/s/ Mary Ann B. Oakley
MARY ANN B. OAKLEY
315 W. Ponce De Leon Avenue
Suite 721
Decatur, Georgia 30030-2441
(404) 378-5111
Georgia Bar No. 548187

COUNSEL FOR THE JUDICIAL
QUALIFICATIONS
COMMISSION

ATTACHMENT J

LAW OFFICES OF
BRUCE S. HARVEY

September 19, 1994

Mary Ann B. Oakley, Esquire
315 W. Ponce De Leon Avenue
Suite 721
Decatur, Georgia 30030-2441

RE: Inquiry Concerning A Judge No. 94-70

Dear Mary Ann:

I am in receipt of your Notice of Deposition for the deposition of Ricky E. Jones on September 26, 1994. Please be advised that I am currently on trial in the ***State of Georgia v Jesse Wayne Johns,*** Indictment No. 92-CR-0435, in the Superior Court of Henry County, before Judge Craig. (A copy of the trial notice is enclosed). This is a case in which the State is seeking the death penalty and I anticipate that it will last another two weeks.

Thank you.

Best regards,

/s/ Bruce S. Harvey
Bruce S. Harvey
Attorney at Law

BSH/jg
enc.

135 Nassau Street, N.W., Atlanta, Georgia 30303
(404) 659-4628 / FAX (404) 681-3953

ATTACHMENT K

[SEAL]

SUPERIOR COURTS
EIGHTH JUDICIAL ADMINISTRATIVE DISTRICT
OCONEE JUDICIAL CIRCUIT

Bleckley, Dodge, Montgomery, Pulaski,
Telfair & Wheeler Counties

HUGH LAWSON,
CHIEF JUDGE
PULASKI COUNTY
COURTHOUSE
P.O. BOX 269
HAWKINSVILLE,
GEORGIA 31036
PHONE 912-783-1696

PHILLIP R. WEST,
JUDGE
DODGE COUNTY
COURTHOUSE
P.O. BOX 571
EASTMAN, GEORGIA
31023
PHONE 912-374-7731

September 20, 1994

Mr. Bruce S. Harvey
Attorney at Law
135 Nassau Street, N.W.
Atlanta, Georgia 30303

RE: Judge Linda O'Neal
JQC Docket Number 94-70

Dear Mr. Harvey:

This letter is to confirm and restate my advice to you in our telephone conversation this afternoon at approximately 1:45 p.m.

I understand that you are presently defending a death penalty case in Henry Superior Court before Judge Craig. I understand that you do not anticipate that a panel of jurors will be qualified before the end of this week and that it will be early next week before the trial

jury is selected. I understand that you anticipate the trial of the case to take five to seven days on the guilt phase, with more time to be required on the penalty phase if the defendant is found guilty.

I understand that you are scheduled to begin a criminal trial before Judge Tidwell in Atlanta on October 3 and that you anticipate the trial of this case will take at least four weeks.

The case against Judge O'Neal has been pending before the Judicial Qualifications Commission since last January. The Commission regards the matter as one of great importance and considers that it is a case that must be resolved without further delay. Judge O'Neal's case has been continued once because of a conflict in your schedule; could be continued against this month; and, if another continuance is granted, the hearing would be difficult to reschedule before the end of the year.

As you and I discussed, your practice is such that you could legitimately have a conflict which would prevent a hearing in the O'Neal case for the next eighteen to twenty-four months. Such a delay simply cannot be tolerated in a case involving allegations of misconduct against a sitting judge either from the point of view of the judge herself or from the perspective of the citizens of her jurisdiction.

In view of the defenses filed by Judge O'Neal I assume that she will contend that she is guilty of no misconduct and that she is eager to clear her name of any charges. As I said, the JQC, for its part, is equally anxious to see the matter resolved. For these reasons, the pre-trial hearing scheduled in this case for 9:00 a.m., September

26, 1994, and the hearing before the Judicial Qualifications Commission scheduled for 9:00 a.m. on Thursday, September 29, 1994, will not be continued and will be held as scheduled even if you cannot be present. You have indicated to me that there is the possibility that another lawyer in your office might represent Judge O'Neal at the hearing, I hope this proves to be the case. Nevertheless, whether she is represented by you, another lawyer in your firm, or some other attorney, both you and Judge O'Neal should understand that the pre-trial hearing will be held on September 26 and the hearing before the JQC will begin September 29.

If you have any question, please feel free to contact me by letter or phone.

Very truly yours,
/s/ Hugh Lawson
Hugh Lawson

HL/nbp

cc: Ms. Mary Ann B. Oakley✓
Mr. John E. James
Mr. Earle B. May, Jr.

DELIVERED BY MAIL AND FAX

ATTACHMENT L

BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

INQUIRY CONCERNING A JUDGE NO. 94-70

DOCUMENTS TO BE OFFERED ON
BEHALF OF JUDGE O'NEAL

The Respondent adopts Movant's list of documents as if fully set forth herein. The respondent submits that these documents will support her contention that she conducted her office in a professional manner; and, in no way, violated any Cannons of the Code of Judicial Conduct.

The respondent reserves the right to timely amend this list of documents if necessary.

/s/ Bruce S. Harvey
BRUCE S. HARVEY
ATTORNEY FOR
RESPONDENT
STATE BAR NO. 335175

BEFORE THE COMMISSION ON
JUDICIAL QUALIFICATIONS

IN RE: JUDGE NO. 94-70

PREHEARING CONFERENCE BEFORE
JUDGE HUGH LAWSON

September 27, 1993

10:00 a.m.

6th Floor
47 Trinity Avenue
Atlanta, Georgia

Renda K. Cornick, CCR-B-909

BROWN REPORTING, INC.
1100 SPRING STREET, SUITE 750
ATLANTA, GEORGIA 30309
(404) 876-8979

APPEARANCES OF COUNSEL

On behalf of the Commission:

MARY ANN OAKLEY, Esq.
Law Offices of Mary Ann B. Oakley
316 W. Ponce de Leon Avenue
Decatur, Georgia 30030

On behalf of the Respondent

WILBURN C. WHITLOCK, JR., Esq.
135 Nassau Street
Atlanta, Georgia 30303

Also Present:

Earle B. May, Jr.

[p. 3] JUDGE LAWSON: Let's hear what you have to say.

MS. OAKLEY: I received – and I understand Judge O'Neal has had the original of this for over a year – I received on Friday from Rick Jones a transcript of the contempt of hearing that is at issue in this case, so I would like to make that an exhibit.

It threw the whole thing out of phase so I just reprinted the whole list. After getting the transcript, I realized some of what had been told was wrong, so I changed the last sentence in Paragraph A and that page fits right in, it just substitutes for the factual bases, the first page.

I brought you a copy in case you didn't have one handy.

MR. WHITLOCK: Thanks.

MR. MAY: So we will have the record clear, then, you have handed to the judge an amended list of documents to be offered on behalf of the JQC.

MS. OAKLEY: Correct. The only thing amended is adding 167 but because it changed the whole sequence of comments on the last three or four pages, I reprinted the whole list. The only change [p. 4] on the first page of factual basis is the end of Paragraph A, the last two sentences.

JUDGE LAWSON: Do we have any quarrel about these documents, the admissibility of these documents.

MR. WHITLOCK: I don't believe so. I think we stipulated.

MS. OAKLEY: That's right. In fact, I think that the prehearing statement that was filed on behalf of the judge stipulates that they are going to use the same documents.

JUDGE LAWSON: What about witnesses?

MR. WHITLOCK: The only thing I would add to the issue of documents is because obviously we filed an emergency motion to the Supreme Court which was denied yesterday, I would ask some leeway, giving to the fact I am going through trial for the first time, if something comes up y'all give me a certain amount of discretion to use that document. Obviously I am just now familiarizing myself with this. I did one short deposition up in Hart County and that was of the issuing magistrate that actually issued the warrants, I think it was probably a 20-minute deposition. That's my sum total knowledge of the case, other than what Bruce and I have just [p. 5] talked about informally.

JUDGE LAWSON: Well, you are going to be doing that between now and Thursday, I am sure.

MR. WHITLOCK: That's all I am going to be doing, I am sure.

JUDGE LAWSON: I would suggest that maybe by Wednesday afternoon you would have had an opportunity to cover what is in the file and if you see anything that falls under that category, you let Ms. Oakley know about it.

MS. OAKLEY: I will be in the office.

JUDGE LAWSON: You know, if you need to bring it back before the Commission for some special ruling, you can do that.

MR. WHITLOCK: Thanks.

JUDGE LAWSON: I am not going to give you a hard time about that.

MS. OAKLEY: Several of our witnesses are going to be by deposition. Do you want me to have those things read into the record or do you want me just to hand them in, referring to the segments we are going to be suing?

JUDGE LAWSON: I would think the latter.

MS. OAKLEY: Good. Take a lot less time.

JUDGE LAWSON: Do you agree with that?

[p. 6] MR. WHITLOCK: I do agree with that. I guess I would like to, obviously, just make a reference to specific areas of the deposition that we think are important.

JUDGE LAWSON: Sure, right. That will save a lot of time. Let's do that.

MR. MAY: Just as a matter of information, may I inquire, do you, the two of you, have all of the original depositions?

MS. OAKLEY: No. That's the other problem. Of those that I have taken, I have Mr. Jordan's, I have the three women down in Fort Valley. I have not received the original of Ms. Moore's. The signature page was sent to her in mid August, Ms. Moore obviously didn't know

what to do with it, so we don't have it. It is very, very short. I don't think there is any problem with what is in it.

With regard to the sheriff and the two commissioners that they took the depositions of, the post office messed up our mail when we moved and we didn't get anything forwarded for three weeks. The depositions got held past that and I didn't get them until last Thursday. I have two of the signature pages I got yesterday when I was down [p. 7] there. The third one should be here soon, I can get them to the court reporter, but I don't think we are going to have the originals. All three of them are going to testify live. You have the copies for impeachment purposes, if we can stipulate using the copies, the two who corrected have very few corrections.

MR. WHITLOCK: I am going to ask for my information who is going to be live and who is going to be deposition.

MS. OAKLEY: Mr. Taylor, Ms. Willis, Sheriff Beckham, Deputy Sheriff Deese are live, that's it. Commissioner Bartlett, I forgot him. Bartlett, Taylor, Willis, Beckham and Deese.

By deposition will be Ms. Moore, Mr. Jordan, Ms. Clark, Ms. Lamb and the Sims. They are all fairly short depositions.

JUDGE LAWSON: Who are you going to have live?

MR. WHITLOCK: Probably just the judge. I don't know, again, I am going to talk with her today and

see if there is anybody. When we did the pretrial order, the only person I was aware of would be her testifying.

JUDGE LAWSON: Any other potential live [p. 8] witnesses?

MR. WHITLOCK: Other potential live witnesses are perhaps her husband, perhaps it would be short depositions of people who actually experienced her courtroom, who have had good results there. I am going to talk with her today about that. I will let Mary Ann know as soon as I know. They wouldn't be long if they are live testimony.

MR. MAY: You are talking about deposing people between now and Thursday?

MR. WHITLOCK: No, actually bringing in live witnesses.

MS. OAKLEY: She is the only one on the list at this point.

MR. WHITLOCK: Right, she is the only one on the list at this point.

JUDGE LAWSON: How long do you think it is going to take to present this?

MS. OAKLEY: Depending on the length of the cross-examination, if the depositions are any indication, it may go more than a day. What I have I can probably do in three or four hours at the most.

JUDGE LAWSON: So you think we will be here Friday?

[p. 9] MR. WHITLOCK: I don't think so. I don't cross-examine as long as Bruce. If I could, I would; but I just sort of run out of things to talk about.

JUDGE LAWSON: What else do we need to do now?

MR. MAY: Judge, there is one thing that I just think for record purposes we might want to just see if counsel would be willing to stipulate.

As you all know Mr. James, the chairman of the Commission, issued an order sometime back designating Judge Lawson as the presiding judge in this matter. At that time, unfortunately, the rules of this Commission did not permit that. The rules required that the chairman preside at all formal hearings. Subsequent to that, when we realized that, we got the Supreme Court to amend that rule to permit the chairman to designate one of the judicial members of the Commission to serve as presiding judge at a formal hearing. It is my judgment that that is simply a procedural change and wouldn't make any substantive difference anyway.

For the purpose of the record, I think, Judge, it would be helpful to have counsel stipulate [p. 10] they have no objection to your presiding in this matter, under the circumstances I have just described.

MS. OAKLEY: You think I am going to sit here and tell Judge Lawson I am not going to let him preside? We have no objections whatsoever, in fact I think it is more efficient.

MR. WHITLOCK: We have no objections. I will state on behalf of my client apparently there was an

informal hearing where things were said between the Judge and Judge O'Neal and in candor of court, I would tell you she is pushing me very hard to ask for recusal of members of the Commission, the chairman, et cetera.

I don't anticipate doing that but it is ultimately, I guess, her choice on that matter. That's something that I really need to discuss with Bruce and haven't had a chance to do it. I have no problem with your Honor presiding under the new amended rules.

JUDGE LAWSON: Okay. Do you anticipate filing a recusal motion between now and Thursday?

MR. WHITLOCK: Only if –

JUDGE LAWSON: She insists.

MR. WHITLOCK: – she insists, that's [p. 11] right. I hesitate to even bring that up, but nevertheless I think I need to say it.

JUDGE LAWSON: I am glad to hear about it. If you file it, we will just have to deal with it.

What else?

MS. OAKLEY: I have nothing else. I think many of the facts in this case there is no question about; there are some disputed facts but I think most of them, the documents are certainly there. The real problem is the interpretation of them and I trust we are going to be permitted to make opening statements and arguments because I think that is critical.

JUDGE LAWSON: Sure, sure, sure.

* * *

[p. 13] MR. WHITLOCK: Are there time limits, is it fairly informal, given ten to 20 minutes for an opening statement, something along that line?

JUDGE LAWSON: As much time as you [p. 14] reasonably want.

MR. WHITLOCK: I didn't see any hard and fast rules.

JUDGE LAWSON: No.

MR. MAY: Judge, I wonder if you mind inquiring if the statement of the issues are substantially agreed upon, are there any differences between y'all with respect to the written statement of the issues that you submitted? I think Mr. Harvey basically said he agreed with the issues you had adopted.

MS. OAKLEY: I framed them in light of the allegations, trying to keep it as consistent as possible. I don't think there is going to be a problem.

JUDGE LAWSON: Well, what else?

MS. OAKLEY: I want to make sure you have copies of all the documents.

MR. WHITLOCK: I believe I have copies of all the documents. I don't know if there was an initial investigative reporter by Ogden or not, if I would even be entitled to that kind of information.

MS. OAKLEY: You have it. It wasn't a report, it was a compendium of interviews with the witnesses.

Bruce did have that because he has [p. 15] attached a couple of them to depositions.

MR. MAY: Just for your information, the rules provides that the Commission is obligated to provide to the respondent judge copies of all statements, interviews, any kind of document of that nature. We are not required to provide the full investigative report or any communications between the Commission and me or us and the Commission counsel, whatever. I believe all of that is what was provided to Judge O'Neal way back. In fact, we are required to do it within 15 days of filing the formal charges and I did it. As far as I know she has everything.

MS. OAKLEY: If you find you are missing any other documents, just give me a call and we will fax them to you.

(Prehearing conference concluded.)

Excerpt From Formal Hearing Transcript

* * *

[p. 14] motion for continuance.

JUDGE LAWSON: At some point, counsel and counsel's client must assume responsibility for their own welfare in any proceeding. The record in this case plainly shows that this hearing was going to be held.

It may well be that Judge O'Neal has a very serious complaint to make against Mr. Harvey through the disciplinary committee of the State Bar, but I cannot see that she has any complaint with this Commission about not having notice that this hearing was going to be held, and I cannot see that your law firm did not have notice that this Commission was going to be held.

Let me ask you this, if the matter were continued, is Judge O'Neal willing to take a leave of absence from office?

MR. WHITLOCK: Judge, do you have an approximate time frame of what we are going to be talking about?

JUDGE LAWSON: Listen, we are ready now. You are the one that has a problem with the time frame. The last time I talked to [p. 15] Mr. Harvey, he told me he was leaving, that the murder trial in which he is involved now in McDonough is going to conclude – take the rest of this week and possibly next, then he is scheduled to proceed before a federal judge here in Atlanta with a trial that is going to take at least four weeks, and so on ad infinitum. He indicated to me it might be 18 months before he was ready to proceed.

MR. WHITLOCK: Judge, if that is what he indicated to you, I do not think that is correct.

JUDGE LAWSON: Maybe not.

MR. WHITLOCK: As I think Mr. Harvey in conversations with your Honor indicated, we have had two death cases this month, the Kesserling case in Cobb and the one in Henry. The Kesserling case in Cobb was tried twice because of a mistrial, now we are involved in a death penalty case in Henry County, which they will indicate the death or innocence part of its probably tomorrow, which would give another two days for sentencing.

You are right. We started a securities fraud case this coming Monday, we are [p. 16] supposed to. The Baxley case in front of Judge Tidwell, federal court. That case involves 125,000 pages of documents. It involves 42 bankers boxes full of documents that the FBI set a special room of the courthouse off for us to go through.

That is a case that has been pending for a long time and is a case that Judge Tidwell has indicated he wants to go to trial, and the only way I assume we would be severed out of that case were if our trial in McDonough were still going on and the judge made the decision to sever our client out because it is a multidefendant case, I think six to eight defendants involved in the case. Again, it is 125,000 pages of documents.

We also two weeks ago, three weeks ago as your Honor is aware, tried the very large 50 kilo cocaine case, largest bust in the state of Georgia. To say that we have been overwhelmed with three attorneys, one paralegal

and no secretary is an understatement. That is not the Commission's fault, I am not indicating that to the [p. 17] Commission. I am just saying I have done everything I can reasonably do to be prepared.

(Conference between witness and counsel.)

JUDGE LAWSON: Mr. Whitlock, gave me your attention here.

First of all, you have not answered the question I asked you about the Judge's willingness to take a leave of absence. That was a question propounded by me. I have not discussed that with any of the members of the Commission. I do not know if the Commission is willing to accept that if she is willing to do that.

Suppose we take a five-minute recess, you discuss that with Judge O'Neal, the Commission will discuss it and we will come back and see where we are.

MR. WHITLOCK: Thank you. Judge.

(A recess ensued.)

(Whereupon, Michael Hauptman has joined.)

JUDGE LAWSON: Mr. Whitlock has your client reached a decision?

MR. WHITLOCK: Yes, she has. She has [p. 18] indicated to me that she does not want to voluntarily step down to take a leave of absence to allow time for Mr. Harvey to be here, she indicated she does not want to do that if she has to take a leave of absence.

JUDGE LAWSON: Let the record reflect that the Commission has decided to grant a continuance only on

that basis. We are willing to continue the matter if she is willing to step down on an indefinite basis until this matter is concluded.

MR. WHITLOCK: Judge, I just let the record reflect she has indicated to me she does not want to take a leave of absence.

JUDGE LAWSON: Very good. Are there any other preliminaries?

MR. WHITLOCK: None that I am aware of, Judge.

Judge, I would just point out that Michael Hauptman has graciously agreed to come here and try to assist me. I called him yesterday afternoon and I expect that he will perhaps cross-examine some of the witnesses because he is an attorney who has deposed several of the witnesses.

* * *

Supreme Court, U.S.
FILED
SEP 12 1995
CLERK

NO. 95-18

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

LINDA O'NEAL,

Petitioner,

v.

JUDICIAL QUALIFICATION COMMISSION OF GEORGIA

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITIONER'S REPLY BRIEF

Linda O'Neal
Petitioner, pro se
Route 1, Box 478
Fort Valley, Georgia 31030
(912) 825-1678

14 pp

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

BRIEF 1

A. JURISDICTIONAL ISSUES 1

B. RESPONDENT'S MISLEADING GENERAL STATEMENT AND ITS NONCOMPLIANCE WITH SUPREME COURT RULE 15.1 3

C. INADEQUATE LEGAL COUNSEL ISSUE IS EXCEPTIONAL 4

D. IMPORTANCE OF ISSUES 8

CONCLUSION 9

TABLE OF AUTHORITIES

Page

Cases

New York ex rel. Bryant v. Zimmerman, 278 U.S., 67, 49 S.Ct., at 63 2

Brinkerhoff-Faris Trust Co. v. Hill, 281 U.S. 673, 677- 78 (1930) 2

Pruneyard Shopping Center v. Robins, 447 U.S. 74, 85-86 n. 9 (1980), 100 S.Ct. 2035, 2043 n. 9 2

Herndon v. State of Ga., 295 U.S. 441, 55 S.Ct. 794, 79 L.Ed. 1530, rehearing denied 296 U.S. 661, 56 S.Ct. 82, 80 L.Ed. 471 ..... 2, 3

Great Northern R. Co. v. Sunburst Oil & Refining Co., 287 U.S. 358, 53 S.Ct. 145, 77 L.Ed. 360 3

Wood et al., v. State of Georgia, 450 U.S. 261, 101 S.Ct. 1097, 67 L.Ed.2d 220, (1981) 3

White v. Ragen, 324 U.S. 760, 65 S.Ct. 978, 89 L.Ed. 1348, rehearing denied 326 U.S. 807, 66 S.Ct. 133, 90 L.Ed. 492 7

Chandler v. Fretag, 348 U.S. 3, 75 S.Ct. 1, 99 L.Ed. 47 ..7

Ungar v. Sarafite, 376 U.S. 575, 84 S.Ct. 841, 11 L.Ed.2d. 921, rehearing denied 377 U.S. 925, 84 S.Ct. 1218, 12 L.Ed.2d. 217 ..... 7, 8

Grigsby v. Mabry, 637 F.2d. 525, on remand
569 F.Supp. 1273 8

Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836 (1948) 9

Constitutional Provisions

First Amendment, Constitution of the United States 2

Fifth Amendment, Constitution of the United States 2, 3, 8

Rules

Rule 15.1, Rules of the Supreme Court of the
United States 4

Treatises

Robert L. Stern, et al., *Supreme Court Practice*,
(7th ed. 1993) 3

No. 95-18

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

LINDA O'NEAL,

Petitioner,

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JUDICIAL QUALIFICATION COMMISSION OF GEORGIA

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITIONER'S REPLY BRIEF

BRIEF

Respondent, in its opposing brief in No. 95-18, misrepresented pertinent facts and issues of law. This is evident from the following:

A. Jurisdictional Issues

Respondent's arguments which challenge, as belated, the constitutional issues raised by Petitioner to invoke the jurisdiction of this Court are without merit. Respondent's statement that Petitioner first attempted to assert the constitutional issues in the Motion for Reconsideration[1] is not

accurate with respect to the First Amendment issue presented to this Court regarding her removal from office for making a public statement. The First Amendment issue was "brought to the attention of the state court with fair precision and in due time", when presented to the Supreme Court of Georgia in petitioner's original petition to that court objecting to the Judicial Qualification Commission's Findings and Recommendations.[2] *New York ex rel. Bryant v. Zimmerman*, 278 U.S., at 67, 49 S.Ct., at 63. "And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented." *Id.* at 67, 49 S.Ct., at 63.

Further, the decision to remove Petitioner from office based wholly or in part on her refusal to acknowledge that any specific action taken by her was improper and her refusal to accept personal responsibility for the difficulties she experienced with other elected officials, as framed by the Fifth Amendment constitutional question presented to this Court[3], was an unexpected decision by the Supreme Court of Georgia, as it had not been a previous issue in the case, and thus Petitioner had no prior opportunity to raise the federal question prior to presenting it in the Motion for Reconsideration to the Supreme Court of Georgia.[4] This Court has held that under such circumstances the federal question is timely raised and will support the exercise of Supreme Court Jurisdiction. *Brinkerhoff-Faris Trust Co. v. Hill*, 281 U.S. 673, 677- 78 (1930). See also *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 85-86 n. 9 (1980), 100 S.Ct. 2035, 2043 n. 9; *Herndon v. State of Ga.*, 295 U.S.

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1 Respondent's Brief in Opposition, at 4.

2 Petition for Writ of Certiorari, Petition and Supporting Brief in Objection to Findings and Recommendations of the Judicial Qualifications Commission , App. at A76-77.

3 Petition for Writ of Certiorari, Questions Presented.

4 Petition for Writ of Certiorari, Motion for Reconsideration, App. at A34.

441, 55 S.Ct. 794, 79 L.Ed. 1530, rehearing denied 296 U.S. 661, 56 S.Ct. 82, 80 L.Ed. 471; *Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 53 S.Ct. 145, 77 L.Ed. 360. Moreover, Petitioner could not have reasonably anticipated this part of the decision by the Supreme Court of Georgia, given its prior decision concerning the inappropriateness of considering a litigant's remorse.[5]

Petitioner's constitutional claim under the Fifth Amendment that she was denied adequate legal representation, first presented to the Supreme Court of Georgia in her Motion for Reconsideration, is supported by a set of facts that are so egregious that this Court, in its discretion, may grant certiorari in order to correct an erroneous decision below and to avert a gross miscarriage of justice. Robert L. Stern, et al., *Supreme Court Practice*, §4.17, at 193-195. Also, this Court has said "where...a possible due process violation is apparent on the particular facts of a case, we are empowered to consider the due process issue." *Wood et al., v. State of Georgia*, 450 U.S. 261, 101 S.Ct. 1097, 67 L.Ed.2d 220 (1981). In *Wood*, supra, this Court, in a footnote, cited several reasons why it was appropriate to consider the due process issue even though it had not been raised in the court below. *Id. at n. 5.* Most importantly, Respondent's statements with respect to this issue, as stated in their opposing brief, are either erroneous or misleading and such misrepresentations will be more fully discussed below.

B. Respondent's Misleading General Statement And Its Noncompliance With Supreme Court Rule 15.1

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[5] *See* In The Matter Of Mitchell, 249 Ga. 280 (290 SE2d 426) (1982), cited in the Petition for Writ of Certiorari, at 23-24.

Contrary to Respondent's misleading statement that reads, "No useful purpose would be served by attempting to detail each and every misstatement, omission and exaggeration contained in Petitioner's Statement of Facts",[6] Petitioner did not make any misstatement or exaggeration with respect to the "Statement of Facts" in her Petition For Writ of Certiorari. Any omission of facts was for the sake of brevity and otherwise does not decrease the significance or merit of Petitioner's constitutionally based claims. Moreover, as shown by Petitioner's Petition and Supporting Brief in Objection to Findings and Recommendations of the Judicial Qualifications Commission, the factual basis for Respondent's Findings and Recommendations filed in the Supreme Court of Georgia is grossly inaccurate, is not supported by the record, and recklessly misrepresents the truth.[7] Furthermore, Respondent's statement of "Applicable Facts" does not fully comply with Supreme Court Rule 15.1, because its mere adoption of the Findings and Recommendations of the Commission fails to meet its obligation to point out any perceived misstatements of fact set forth in Petitioner's Petition for Writ of Certiorari.

C. Inadequate Legal Counsel Issue Is Exceptional

Respondent's challenge to Petitioner's claim of inadequate legal counsel is faulty, and misrepresents the facts. Petitioner originally retained the services of Mr. Bruce Harvey, a very experienced and well-qualified trial attorney, to represent her before the Judicial Qualifications Commission. Mr. Harvey thoroughly discussed the case with Petitioner and studied the case documents, which later

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[6] Respondent's Brief in Opposition, at 4.

[7] Petition for Writ of Certiorari, Petition and Supporting Brief in Objection to Findings and Recommendations of the Judicial Qualifications Commission , App. at A53-89.

became the case exhibits, prepared and filed all preliminary pleadings prior to the pre-trial conference, and deposed two Peach County Commissioners, who later testified at the Formal Hearing. He could not attend depositions scheduled on two dates by Respondent because of schedule conflicts, so he arranged for substitute counsel to appear at those depositions on Petitioner's behalf.

Mr. Pete Whitlock, who is an associate in Mr. Harvey's law firm, substituted for Mr. Harvey at the deposition of Judge Kendall Jordan, taken on August 12, 1994, by Respondent.[8] According to Mr. Whitlock it was a short deposition that lasted about 20 minutes.[9] On September 26, 1994, when Petitioner was advised that Mr. Harvey would not be able to attend the pre-hearing conference scheduled for September 27, 1994, she asked Mr. Whitlock to attend the conference.[10] Mr. Whitlock advised Judge Lawson, the designated presiding judge for the Formal Hearing, at the pre-hearing conference held on September 27, 1994, that he was "going through trial for the first time", and that his "sum total knowledge of the case" was his participation at the Jordan deposition and what he and Mr. Harvey had "just talked about informally".[11] As shown by the transcript of the pre-hearing conference,[12] Mr. Whitlock's representation of Petitioner was nothing more than perfunctory: it lacked the adversarial spirit that stems from being an experienced, informed and prepared counsel.

Mr. Michael Hauptman substituted for Mr. Harvey at five depositions taken on August 11, 1994. One of the

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8 Judge Jordan did not appear as a witness at the Formal Hearing.

9 Respondent's Brief in Opposition, App. at 107.

10 Petitioner and Mr. Whitlock never discussed the case documents, the potential witnesses, or the case with each other prior to the Formal Hearing. Petition for Writ of Certiorari, at 12, 25.

11 Respondent's Brief in Opposition, App. at 107.

12 *Id.* at App. 105-114.

individuals deposed was the Sheriff of Peach County, Johnnie Becham. Of the five individuals deposed, Sheriff Becham was the only one who later testified at the Formal Hearing. Although Mr. Hauptman substituted for Mr. Harvey at the above-mentioned depositions, he is not in association with Mr. Harvey; he has a separate law practice and office address.

Mr. Harvey was still in the midst of a criminal trial on September 29, 1994, and was unable to attend the Formal Hearing. Mr. Whitlock, therefore, represented Petitioner. At the request of Mr. Whitlock, Mr. Hauptman attended the Formal Hearing held on September 29, 1994. He arrived after Mr. Whitlock moved and argued for a continuance, but in time to hear the Commission's denial of the motion.[13] Later he cross-examined, without trial preparation, two witnesses, Sheriff Becham and Marcia Willis, the Peach County Administrator. Notably, Mr. Hauptman did not attend the second day of the Formal Hearing held on September 30, 1994. Additionally, Mr. Hauptman had no meaningful opportunity to prepare for the case because he had not discussed the case with Petitioner and, except for the very few documents he saw during the depositions he attended seven weeks earlier, he had not read or studied the numerous case documents or exhibits, and he had not read any of the deposition transcripts.

Respondent's denial of Mr. Whitlock's oral Motion for Continuance at the beginning of the Formal Hearing was based on Petitioner's refusal to take an "indefinite"[14] (not "temporary", as stated in Respondent's opposing brief[15]) leave of absence from office. Conditioning the grant of a continuance on the basis that Petitioner take an indefinite leave of absence from office, who had not yet been tried and

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13 Respondent's Brief in Opposition, App. at 117.

14 Respondent's Brief in Opposition, App. at 118.

15 Respondent's Brief in Opposition, at 5.

found guilty of any misconduct, and without any reasons or justifiable explanation being given by Respondent for such conditional terms, was a coercive, arbitrary, and prejudicial ploy by Respondent, and was an abuse of discretion. Due process was clearly lacking in Respondent's offer to grant a continuance on such a basis. Obviously, granting Petitioner a continuance so that her legal counsel could adequately prepare a meaningful defense was not the object of concern of Respondent, instead the objective was to remove her from her judicial office as soon as possible, which for all practical purposes the offer of continuance, if it had been accepted by Petitioner, would have accomplished.

The facts and circumstances detailed herein, when combined with those stated in the Petition for Writ of Certiorari,[16] show that Mr. Whitlock, an inexperienced trial counsel, was not given a reasonable opportunity to adequately prepare a meaningful defense on Petitioner's behalf.

This Court has stated that "it is denial of an accused's constitutional right to a fair trial to force him to trial with such expedition as to deprive him of effective aid and assistance of counsel". *White v. Ragen*, 324 U.S. 760, 65 S.Ct. 978, 89 L.Ed. 1348, rehearing denied 326 U.S. 807, 66 S.Ct. 133, 90 L.Ed. 492. Also, in *Chandler v. Fretag*, 348 U.S. 3, 75 S.Ct. 1, 99 L.Ed. 4, this Court said "that a defendant must be given reasonable opportunity to employ and consult with counsel". In this case Petitioner was forced to proceed in the Formal Hearing with new trial counsel, who

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[16] Mr. Whitlock had two days to prepare for the Formal Hearing. The case at that point involved hundreds of pages of documents and exhibits, and over 450 pages of deposition transcripts. He had no meaningful opportunity to read the documents or to study the case, or to discuss the case with Petitioner; and he advised Respondent in his oral Motion for Continuance at the beginning of the Formal Hearing that he was not "adequately prepared", that he "would not be able to adequately represent Judge O'Neal", and that he felt he "would be ineffective". Petition for Writ of Certiorari, at 11-12, 25, and accompanying notes.

by his own admission was unable to adequately prepare a defense on just two days notice,[17] Furthermore, Petitioner was not afforded a reasonable opportunity to consult with her new trial counsel.[18] Under such circumstances Respondent's denial of a continuance was an abuse of discretion, and so arbitrary as to violate due process. See *Ungar v. Sarafite*, 376 U.S. 575, 84 S.Ct. 841, 11 L.Ed.2d. 921, rehearing denied 377 U.S. 925, 84 S.Ct. 1218, 12 L.Ed.2d. 217 (Whether the denial of a continuance is so arbitrary as to violate due process depends on the circumstances present in each particular case.). Additionally, Mr. Whitlock's admission to the effect that he felt he "would be ineffective"[19], given as one of the reasons for the Motion for Continuance, highlights Respondent's abuse of discretion in denying the motion. See *Grigsby v. Mabry*, 637 F.2d. 525, on remand 569 F.Supp. 1273 (Although continuance is usually within the discretion of the trial court, trial court's refusal to grant a continuance may deny a defendant effective assistance of counsel or be so arbitrary as to violate due process.).

Petitioner's claim that she was denied adequate legal counsel, as supported by the facts and circumstances stated herein and in the petition, sufficiently states a Fifth Amendment claim to warrant review by this Court.

D. Importance Of Issues

The issues raised by Petitioner, in the context of a judicial officer, are important because the public has a substantial interest in the integrity of the judiciary and in having elected judges in office who are not fearful of expressing their opinion publicly with respect to public

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17 Petition for Writ of Certiorari, at 12 and note 25.

18 *Id.* at 12, 25.

19 *Id*, at 12 and note 25.

corruption and other "matters of legitimate public concern"[20]; who are not fearful of asserting their constitutional right to deny charges of misconduct when they believe they have not committed any misconduct; and who are not denied adequate legal counsel to aid in their defense against charges of misconduct. The novel nature of the facts and issues in this case will likely result in the reported decision below being read by many judges and cited in other cases in Georgia and throughout the Nation. Thus, the potential for judicial intimidation, injustice and the undermining of the public's interest in the integrity of the judiciary caused by the negative influence upon judges who read the decision, and other decisions which may be based on the erroneous decision are additional reasons why the petition should be granted.

Lastly, it is quite evident that Petitioner's First and Fifth Amendment rights were violated and in such cases this Court has stated that, "Where... it is clear that the action of the State violates the terms of the fundamental charter, it is the obligation of this Court so to declare." *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836 (1948).

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[20] *Quoting* from Scott v. Flowers, et al., 910 F.2d 201, 211 (5th Cir. 1990).

CONCLUSION

In light of all the foregoing reasons, as well as those set forth in the petition, the Petition for the Writ of Certiorari should be granted.

Respectfully Submitted,

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